THE

CENTRALIZATION OF ADMINISTRATION IN OHIO

BY

SAMUEL P. ORTH, B.S.

University Fellow in Administration

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
FACULTY OF POLITICAL SCIENCE
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TABLE OF CONTENTS

INTRODUCTION

CHAPTER I

PUBLIC EDUCATION

CHAPTER II

Taxation and Local Finance

CHAPTER III

Charities and Corrections

CHAPTER IV

State Health Administration

CHAPTER V

Miscellaneous Functions

CONCLUSION

INTRODUCTORY

Ohio was admitted to the Union February 19, 1803. It was the fourth State to be admitted, and the first to be carved out of the Northwest Territory. It was governed as part of that Territory, under the Ordinance of 1787, until 1800, when the Territory of Indiana was formed of the western portion. The State has had but two Constitutions in the century of its history; the one framed on its admission, and the Constitution of 1851. The latter provides for a constitutional convention to be called by the electors every twenty-five years. Such a convention was authorized in 1876, but the people refused to ratify its work at the polls.

There has been but little change wrought in the organic law. The growth of the State has antiquated many of the constitutional provisions. This has naturally resulted in deterring progress in certain lines of State authority; indeed, some of the sections, notably those that deal with taxation and finance, have actually worked hardship upon the people.

The tradition of the State has always been against centralization.[1] The first Constitution, formed very soon after the bitter political struggle between Jefferson and Adams, and at a time when there was great antagonism against the territorial Governor, St. Clair, who had ruled with an arbitrary hand, provided for an executive shorn of all power. The second Constitution did not greatly add to the executive authority.

[1] *Vid. infra*, p. 148.

But these traditions have not alone affected the position of the executive. The entire history of administration in the State reveals a constant struggle against giving authority to a board, or a commissioner or any other administrative officer. This is especially true of those administrative functions that were developed earlier, such as State charities, State finances and public education. The increased complexity of life has created in the past forty years a growing demand for increased diversity in administrative details. For most of these no direct provision is found in the Constitution, and the Legislature has from time to time created new administrative bodies. In these newer functions, that are the direct outgrowth of the more recent necessities, a greater degree of centralization has been attained.

There has been, thus, a sustained tendency toward decentralization. The Governor, for instance, may appoint State officers and the members of the newer administrative boards, but he can do so only with the consent of the Senate. And his power of removal is limited to "cause." He has practically no power of direction over any administrative authority in the State.[1] County officials are also immune from the executive's direction, nor can they be removed by him even under the most urgent conditions. But the new municipal code gives the Governor the power to remove the Mayor of any municipality in case of misconduct, bribery or other gross and apparent violations of law. The action of the Governor is final.[2] This subordination of the Governor is reflected in the subordination of the State to the localities in administrative details. The State, for instance, as a financial unit is greatly inferior to the municipality.

[1] The governor may ask certain state officers for information concerning their department; and upon complaint being made by private citizens, can direct certain boards to investigate the charges made.

[2] *Municipal Code*, sec. 226.

The State revenues are less than one-eighth as great as local revenues. The hesitation of the Legislature to delegate authority to administrative boards has resulted practically in local autonomy even in matters wherein State direction might be most effective. The county has developed a large degree of self-direction in taxation, the administration of poor laws, and the care of roads and bridges.

Cities also, with one exception, were left autonomous in administrative matters. It seems paradoxical, but the great amount of special legislation designed to interfere with local municipal government did not thrust upon the cities any central direction over administrative details.

It is perfectly evident that as the population of a given area increases, the amount of necessary local administrative details grows in complexity. And when such an area becomes densely populated a higher degree of administrative efficiency is necessary, and popular administration should be replaced by expert administration.

The growth of population [1] has been so rapid in Ohio that it has attained the fourth rank among the States of the Union. While there are no cities of the first magnitude, there are two of great importance, Cincinnati and Cleve-

	1810.	1830.	1850.	1870.	1890.	1900.
[1] Cincinnati	2,540	24,831	115,435	216,239	296,908	325,902
Cleveland	.....	1,000	17,034	92,829	261,353	381,768
Other cities over 8,000.	.....	.....	2	14	27	36
Total urban population	2,540	42,831	151,375	517,909	1,159,342	1,599,840
Population of the State	230,760	937,903	1,980,329	2,665,260	3,672,329	4,157,545*
Per cent. of urban population	1.1	4.5	7.6	19.4	31.6	38.5
No. of cities with over 8,000 inhabitants..	.....	1	4	16	29	38

*45 towns of over 4,000 with population of 264,669. This added to above makes the urban population 44.8 per cent. of population.

[1] The following table shows the urban growth of the State during the century.

land. The latter has developed so rapidly in the last thirty years that it is now the second city on the Great Lakes. This development of cities has largely taken place in the last forty years. Until 1830 Cincinnati was the only city in the State with more than 10,000 inhabitants, and until 1880 it was the only city with more than 100,000 inhabitants. To-day there are four such cities. The urban population of 1890 was over three times as great as that of 1870. There are at present thirty-eight cities in the State with more than 8,000 inhabitants, and they contain 38.5 per cent. of the population of the State, and there are forty-five municipalities with over 4,000 inhabitants. The total urban population in municipalites over 4,000 is 44.8 per cent. of the population of the State.

Excepting the two largest cities, this urban population is quite evenly distributed among cities of from 20,000 to 80,000 inhabitants. This makes the conditions of the problem of city government less unequal than in those States that have one city of overshadowing size, like New York or Pennsylvania. About one-half of the population live in rural districts and villages, which enjoy a considerable degree of self-government.

But while there is no such great diversity in urban conditions as exists in some of the other States, there has been by no means a uniform development of centralization in city government. On the contrary, the greatest diversity has resulted. This is due to special legislation.

The first Constitution of the State did not provide for the organizing of corporations of any kind. Municipalities were chartered by special act. Many minor municipalities had been thus chartered, and foreseeing the results the makers of the Constitution of 1851 dictated that "the General Assembly shall provide for the organization of cities and incorporated villages by general laws, and restrict their

power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent the abuse of such power," [1] and in another section they declared that "all laws of a general nature shall have a uniform operation throughout the State." [2] It is also provided that "the General Assembly shall pass no special act conferring corporate powers." [3] In the face of this reiterated command the Legislature began to pass special laws. In the first session following the adoption of the new Constitution an act was passed providing for the organization of cities and incorporated villages. The cities, however, were subdivided into two classes, the first class including those with a population of over 20,000, and the second class including all others. This was the unassuming beginning of a classification that grew to absurd proportions as the number of cities multiplied. To avoid the constitutional limitations against special legislation all the charters were enacted to apply to cities with a certain population, instead of naming the cities.[4]

Strangely, the Supreme Court of the State gave its sanction to this circumlocution as a means of evading the obvious intent of the framers of the Constitution.

The following table exhibits the complexity of classification attained by this method of special legislation:

CITIES.

Class I.

Grade 1.....Over 200,000 inhabitants.
Grade 2.....From 90,000 to 200,000 inhabitants.
Grade 3.....From 31,500 to 90,000 inhabitants.
Grade 4 those promoted from Class II.

[1] *Article XIII.*, sec. 6.
[2] *Article II.*, sec. 26.
[3] *Article XIII.*, sec. 1.
[4] Delos F. Wilcox, *Municipal Government in Michigan and Ohio.* S. P. Orth, *Municipal Situation in Ohio, Forum*, June, 1902.

Class II.

Grade 1 .....From 30,500 to 31,500 inhabitants.
" 2 ..... " 20,000 to 30,500 "
" 3 ..... " 10,000 to 20,000 "
" 3a..... " 28,000 to 33,000 "
" 3b..... " 16,000 to 18,000 "
" 3c..... " 15,000 to 17,000 "
" 4 ..... " 5,000 to 10,000 "
" 4a..... " 8,000 to 9,500 "

INCORPORATED VILLAGES.

Class I.

From 3,000 to 5,000 inhabitants.

Class II.

From 2,000 to 3,000 inhabitants.

Hamlets.

All villages under 2,000 inhabitants.

This patch-work was pieced together largely for the purpose of covering local political conditions. No uniformity was sought in the framework of local governments. The Constitution was disregarded. While mere uniformity in municipal legislation is not a virtue, for the local needs are various, still such an extreme of classification as was here indulged in led to great abuse. Party politics, rather than local needs, dictated the form of legislation.

There resulted therefrom every degree of administrative authority, from centralization to complete decentralization. The charters of the two largest cities were antipodal. To one city the Legislature granted home rule; the other it deprived of all autonomy. In Cleveland the federal plan was developed. The Mayor was made a responsible executive, appointing and directing the heads of the city departments. He had the power of removal, a considerable control over local finance through his appointing power, had a veto on all acts of the Council, and through the large discretionary power granted to departments practically managed all of the city affairs. On the other hand, Cincinnati

was governed by the Legislature. The Mayor was a mere figurehead. The City Council and Board of Administration ruled. There was nowhere a responsible authority. At one time even the Governor appointed the administrative boards, and some years ago a special act of the Legislature gave the Board of Administration the power to grant for fifty years a practical monopoly of street railway franchises, without the right of interference of the people or even the City Council. This has been the extreme limit reached by the Legislature in its interference with local administration.

Among the lesser cities the diversity was as great. As a general rule responsible centralized administrative authority was wanting. Very rarely was power given to one official or to a department, but administration was entrusted to boards. A favorite resort was the "bi-partisan" board. This had the semblance of taking administration out of politics. It only resulted in one faction of a party playing into the hands of a faction in another party and intensifying the political aspect. An extreme example of the decentralized, irresponsible administrative board is seen in the form of government assigned to the cities of Youngstown and Akron. Here the Probate Judge, an officer elected by the county, and the Mayor appointed a "bi-partisan" board of four Commissioners, who had complete charge of city administration. Under this form of government no one was responsible. The Mayor, the Council, and the Board of Commissioners dodged responsibility by thrusting it from one to the other. It was impossible to fix the blame for administrative shortcomings.

The merit system of appointment, as a means for securing efficiency in either municipal or State administration, was virtually unknown in the State;[1] except in certain cities, in

[1] The code prescribes it now for all cities, secs. 146–187.

which the police and fire departments were controlled by a modified merit system.

But the entire municipal situation was suddenly changed in June, 1902, by the revolutionary and commendable course of the Supreme Court in sweeping aside its long line of former decisions and holding that classification is special legislation, and therefore unconstitutional under the present Constitution. The immediate cases calling forth this decision were brought against Cleveland and Toledo.[1]

The new code is not a step toward centralization. On the contrary, it deprives those cities which had adopted the federal plan of their centralized government and substitutes the decentralized board plan. It provides a Council, whose functions are purely legislative. The executive power is "vested in a Mayor, president of Council, Auditor, Solicitor, Department of Public Service, Department of Public Safety" and several minor boards. Of these officers all except the Board of Public Safety are elected.

The Mayor's principal power is legislative. He can veto ordinances. He appoints, usually with the concurrence of the Council, certain minor officials. The heads of departments consult with him. He fills vacancies, and has the power of preferring charges against any officer, the Council acting as a court upon the charges. But while it is "made the duty of the Mayor to have a general supervision over each department and the officers," it is not clear how his power of supervision will amount to much, since he is not a member of the principal administrative boards and since the principal officers are elected, and his power of removal must be exercised with the sanction of the Council.

Administration is centered principally in two boards. A Board of Public Service, elected for two years, has super-

[1] State *ex rel.* Kinsley *et al. v.* Jones *et al.*, 66 *Ohio State*, 453; State *ex rel.* Attorney General *v.* Beacom *et al.*, 66 *Ohio State*, 491.

vision of most of the business usually conducted by a municipal corporation. The law declares the board to be "the chief administrative authority of the city, and it shall manage and supervise all public works and all public institutions," except a few, for which special provision is made. This board is an authority unto itself. It is limited by the Council only in the expenditure of money. It appoints as many laborers and inspectors as it sees fit, and fixes their pay.

The other department created by the law is the Department of Public Safety. This is in charge of a board appointed by the Mayor, with the consent of two-thirds of all the members elected to the Council. This board has a general oversight over the Police and Fire Departments, but the scope of its authority is limited by civil service rules and by the powers of the chief of police and the chief of the Fire Department. These chiefs have a considerable degree of autonomy, and can be suspended only by the Mayor. Thus the Directors of Public Safety are confined to matters of business routine rather than to real supervision.

The minor administrative boards are the Library Board, the Board of Health, and the Board of Tax Commissioners, who also have charge of the sinking fund. These boards are all appointed by the Mayor, the former with the consent of the Council.

The Board of Tax Commissioners and Sinking Fund Trustees is created as a check upon hasty financial legislation. They serve without pay, and approve all tax levies before the same can be valid. They also have full control of the sinking fund. The Tax Commissioners and Library Board are bi-partisan.

Executive and administrative powers could hardly be more scattered than they are by this plan. The scheme reveals its ancestry, the long line of special acts passed

during the last fifty years. A bit of each plan was put into the new one, and the result is decentralization. The Legislature was handicapped by the constitutional provision enjoining a universal application of the code. It was necessary to act for small cities and large ones, and thus strike a general average which will fit only a few.

The universal inconvenience which has arisen from the readjustment of all municipal governments to this law, and the conduct of the special session of the Legislature that framed the new code, have aroused considerable agitation throughout the State for a constitutional amendment, allowing more flexibility in municipal matters, and especially for providing a greater degree of home rule. The Missouri plan of letting certain of the larger cities frame their own charters is mentioned with favor.

In spite of the traditional tendencies against centralization that have clung to the State through its century of existence, there are certain well-defined movements toward centralized administration. Some of these are not well marked, others are merely in the formative period, while a very few instances of strongly centralized control are found.

The movement toward centralization has been greatly accelerated in recent years, and has found greatest favor among those activities more recently undertaken by the State.

A considerable degree of centralization has been effected in the election laws and in the control of private corporations. Moreover, there has been a rapid increase in the number of duties imposed upon existing State officials. Thus considerable authority has been centralized in the office of the State Treasurer, the Secretary of State and the Attorney-General. The State Auditor has evolved into a powerful administrative officer. He is at present a member of twenty-two boards and special commissions entrusted with certain governmental details.

This inquiry was begun originally with the idea of ascertaining what tendencies are manifest toward the centralization of administration in those duties that formerly were exercised by localities, and of determining what causes compelled such centralization and what results have followed. It soon became apparent that Ohio's situation in the matter of administration was anomalous as compared with that of other great States. Her progress toward efficient administrative authority has been slow, while her commercial development has been rapid and her political prestige great. Thus a secondary object of inquiry was provided, viz., to ascertain, if possible, the causes of this delinquency.

It will be natural to begin with a study of the State school system, for its history reveals best the tendency and policy of the State in administrative matters. This will entail, first, a study of the public school system, including the school finances; an account of the disposal of the school lands; an analysis of the school district, its officers and functions; and of school supervision, both State and local; as well as a study of other tendencies that make for centralization in educational matters: second, a study of the higher education; this will include the development of the State universities and their correlation with the private colleges of the State.

The second chapter deals with the development of the State's system of taxation and local finance. This includes a discussion of the general property tax, equalization, the special tax laws of more recent years, and State control over local finance.

A third chapter endeavors to trace the centralizing tendencies in the administration of the Charities and Corrections of both the State and the localities. This naturally suggests the treatment of poor relief, penal and reformatory

institutions, the State charitable institutions, and all of them as influenced by the Board of State Charities.

The fourth chapter treats of health administration, first under decentralized local authorities, and second under the control of the State Board of Health.

The final chapter enumerates the administrative authorities that have been created in more recent years, and under whose supervision the State has centralized many functions. Some of these do not fall strictly within the sphere of this essay, because the functions which they exercise never were discharged by the locality. They have been added because they indicate a tendency to create new centralized authorities rather than to follow the old plan of delegating to the municipalities the power to exercise such new functions as can now properly be administered by State authority.

In the conclusion are set forth, as nearly as they can be ascertained, the tangible causes that have retarded the development of centralized administration in the State, while all of the neighboring States have made considerable progress in this direction. There is also added a summary of the conclusions that may be deduced from this inquiry.

This research was made difficult because of the nature of the sources. While the State Library contains a full set of the State reports and the Assembly journals, they are in themselves very unsatisfactory because of their barrenness. The journals are mere records of motions made and passed. The reports, as a rule, have little to say concerning the prevailing conditions that called them forth. And there is a notable dearth of court decisions upon points pertaining to administrative law.

CHAPTER I

PUBLIC EDUCATION

The Public School System

INTRODUCTORY

The diffusive, or Ohio, system of scattered administrative power struggling toward more efficient centralized control is nowhere more clearly shown than in the system of education of that State. The instances of centralization are isolated, and are scattered over various spheres of activity, instead of being confined to certain fixed lines, as is the case in States that have brought their educational systems to a higher degree of efficiency.

In order to bring into clear relief the inadequacy of the decentralized method of supervision I shall dwell largely upon the history of the common school system, and shall quote extensively from the reports of those officials whose duty it is to perfect the educational advantages of the State. I shall thus be led to emphasize quite as strongly the lack of centralization and its fruits as the instances of centralization and their results.

The constitutional basis of the common school system of Ohio is laid in the oft quoted passage of the Ordinance of 1787, "Religion, morality and knowledge being necessary to good government, schools and the means of education shall forever be encouraged." This sentiment was paraphrased in the Constitution of 1802, which further declared (Art. III., 82) that "The General Assembly shall make such provisions, by taxation or otherwise, as, with

the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State." Although the Constitution of 1851 reiterates this obligation, its literal fulfillment remains as yet a matter of the future, for the public school system of the State is neither "thorough" nor "efficient," and for reasons that are made apparent by a careful study of the school administration.

THE SCHOOL LANDS

The financial basis of the common schools of Ohio, as of all the other States erected out of the Northwest Territory, is the land appropriated by act of Congress in 1785. The United States government ordered a survey of the territory into square townships, each township to contain thirty-six sections of one square mile each, and set aside lot number sixteen of every township for the maintenance of public schools within the said township. These school lands were designated as "section sixteen." Not all of the State, however, was thus surveyed.

The State of Connecticut retained control over a strip of land on the south shore of Lake Erie, about thirty-five miles in width, and extending westward from the Pennsylvania boundary about one hundred and twenty miles. This was called the "Connecticut Western Reserve."

The State of Virginia retained enough land between the Scioto and Little Miami rivers to satisfy the claims of her Revolutionary soldiers. This was known as "The Virginia Military Tract." Territorial jurisdiction was yielded in both cases to the United States.

Congress also set aside a tract of land in the southern portion of the State as a bounty for the relief of Revolutionary soldiers. This was called "The United States Military Tract." And by the act of Congress section twenty-six

was set aside for religious purposes. This was known as "The Ministerial Lands."

In 1787 "The Ohio Company" purchased one and a half million acres in the southeastern portion of the State, and Congress gave, in addition to section sixteen, two entire townships for the endowment of a university. A like provision was made for a university in the "Symmes Purchase."

Congress subsequently set aside school lands to satisfy the claims of the Western Reserve and the two military districts. In all eleven hundred square miles, one thirty-sixth of the entire area of the State, were devoted to the use of the public schools.

The history of the administration of this great trust is not creditable to the administrators, and illustrates the inefficiency of a Legislature as an administrative body. The earliest school legislation dealt entirely with the disposal of these lands. The State first attempted to lease the school lands. The first Legislature [1] passed an act providing for the leasing of section sixteen in the United States military tract for a term not exceeding fifteen years. The rent for that period, per quarter section, was to consist in clearing fifteen acres, planting an orchard and building a cabin. The leases were made by agents appointed by the Governor, but in 1805 this power was delegated to the township trustees of the county, and they were to apply the proceeds of the leases "to the education of youths."

The number of counties in the State grew from nine, in 1802, to eighty-eight, in 1850. Many of the county lines passed through the townships as originally surveyed. This lent complexity to the school land problem, for the sections set aside by Congress were for the benefit of the townships

[1] *Ohio Laws*, i, p. 61.

in which the land was situated. This confusion was not lessened by the establishment of a separate administrative board in each of the "original surveyed" townships.[1] This board consisted of three trustees and a treasurer elected for one year, and had the power to lease the school section and apply the proceeds to the use of the schools. This separate organization of the "original" townships has prevailed almost continuously to the present time in those townships wherein the school section has not been sold. The term of office has been altered at intervals, and is now three years. For a few years subsequent to 1815 the Common Pleas Court appointed the "school land commissioners." In 1809[2] the United States military tract school land was surveyed into quarter sections, and these were leased to the highest bidder at not less than two dollars per acre, in addition to the cost of sale and survey, said costs to be paid down. The principal was, however, not to be paid, but in lieu thereof a yearly rental of 6 per cent. forever, "subject, however, to alteration by any succeeding Legislature, so as to enable the purchaser to make such commutations as said Legislature may think expedient." This perpetual lease was altered the succeeding year,[3] the Legislature agreeing to accept a cash payment of ten dollars per quarter section as a commutation of the cost and five years' rental. This robbed the schools at once of eighty-six dollars per quarter section, for the rental would have been at least ninety-six dollars. The time for making the required improvements was extended in 1813[4] and again in 1814.[5]

In 1835 section sixteen was appraised by order of the Legislature,[6] and provision made for appraisals every twenty years thereafter, the improvements not to be considered.

[1] *O. L.*, iv, p. 25. [2] *O. L.*, vii, p. 108. [3] *O. L.*, viii, p. 253.
[4] 11 *O. L.*, p. 161. [5] 12 *O. L.*, p. 51. [6] 33 *O. L.*, p. 15.

The law of 1810 [1] was amended in 1817, requiring leases to be made for ninety-nine years, renewable forever, the annual rental remaining at 6 per cent. of the appraised value. The first appraisal of the school lands was really made under this act, but owing to the laxity of officials the majority of the sections remained unappraised until the law of 1835.

Various acts made provision for the leasing of the undisposed school lands. In 1824 [2] leases were limited to fifteen years. In 1831 [3] this term was reduced to seven years, while the power of leasing lands was vested in the township trustees. The statute of 1817 [4] provided that the county commissioners alone could renew the leases and should appoint three appraisers.

Despite these general laws the Legislature passed at every session numerous special laws, granting various localities the privilege of disposing of their school land. So unsatisfactory was this method of utilizing these lands that Governor Brown stated in his message in 1821, "So far as my information extends, the appropriation of the school lands in this State has produced hitherto (with few exceptions) no very material advantage in the dissemination of instruction—none commensurate with their presumable value." [5] The lessor often sub-let his land at great profit.

In 1824 the State petitioned Congress for the right to sell the lands. After three years' waiting, without formal assent, the Legislature passed in 1827 two separate acts providing for the sale of section sixteen,[6] and for securing by ballot the assent of the Virginia [7] and the United States military districts for the sale of their school lands. The subsequent year [8] provision was made for the sale of the

[1] 15 *O. L.*, p. 202. [2] 22 *O. L.*, p. 419. [3] 29 *O. L.*, p. 492.
[4] 15 *O. L.*, chap. 46. [5] *Senate Journal*, 1821, p. 13.
[6] 25 *O. L.*, p. 103. [7] 25 *O. L.*, p. 45. [8] 26 *O. L.*, p. 10.

lands in the Virginia and United States tracts. One-sixth was to be paid down, and the rest in five annual installments. Section sixteen [1] was to be sold, one-fourth down and the rest in annual installments, to the highest bidder, but not for less than the appraised value. But the leased lands could not be sold. If the lease was permanent the leaseholder could surrender the lease and obtain a title in fee simple by purchasing, paying one-eighth down and the residue in seven annual installments. In the United States military district the purchase price was divided into ten installments.

Since 1852 [2] the holders of perpetual leases who desire to obtain title in fee must obtain permission of the township trustees to buy the land. But these provisions were subject to annual fluctuations, induced by the leaseholders or purchasers of the school lands. In 1843,[3] and again in 1852,[4] there were general revisions without making substantial change. The process of sale now in vogue is practically the one inaugurated in 1828. The sale is conducted by the township trustees, the voters of the township having first signified their willingness that the lands be sold. The Court of Common Pleas appoints three appraisers who are residents of the township, and these, with the county surveyor, divide the land into convenient parcels and appraise each parcel. The Court reviews the proceedings, and if found correct the auditor sells the land to the highest bidder, but not for less than the appraised value. Since 1873 [5] one-third of the price is paid down, the remainder in two annual installments. If the land is not sold in two years it is reappraised. The lands in the United States district were all sold by 1840. In the Virginia military district about

[1] 27 *O. L.*, p. 32. [2] 50 *O. L.*, p. 168. [3] 40 *O. L.*, p. 20.
[4] 50 *O. L.*, p. 168. [5] 70 *O. L.*, p. 230.

nine thousand acres remain under perpetual lease at twelve cents per acre annually.[1]

The school lands of the Western Reserve were subject to less legislation, as no perpetual leases had been granted. In 1829 the inhabitants voted to sell the lands, and by 1837 all were sold. An additional strip of land had been granted by Congress in 1834 to the Western Reserve, because the former grant had been insufficient. This land was sold, after the consent of the voters had been given, in 1850. Nearly all of section sixteen has been sold. In 1898 thirty-seven counties still reported incomes from rentals, but the total amount was only $17,514.75.[2]

The same act of Congress that set aside school lands in Ohio gave several sections of lands that contained salt springs to the State for the use of schools. The State early attempted to work these lands, and appointed an agent [3] to have charge of the salt wells, but no success ever attended the experiment. In 1810 [4] the monopoly of working one of the sections was granted to three parties, but this arrangement lasted only four years. Subsequently agents were appointed by the Governor. In 1824 Congress granted permission to sell the salt lands, and they were sold the following year.

In 1850 the United States granted "swamp and overflow" lands along the several rivers of the State for school purposes. The 25,720 acres in Ohio were soon sold. Ohio's share in the public lands granted by Congress for the establishment of agricultural colleges in 1862 was 630,000 acres. This was sold for $342,450, but this sum was not utilized until it had increased to one-half million dollars.

[1] *Education in Ohio*, p. 29. Centennial volume.

[2] *Auditor's Report*, 1898, p. 11.

[3] 1 *O. L.*, p. 21. [4] 8 *O. L.*, c. 56.

The various funds thus created form the "irreducible school funds" of the State. In 1901 they aggregated as follows:

Section sixteen	$3,405,335.43
Section 29, ministerial lands	142,154.60
Virginia Military Tract	195,596.47
United States Military Tract	120,272.12
Western Reserve	257,499.21
Ohio State University—"Agricultural College"	555,588.26
Ohio University—"Symmes Purchase"	14,999.58
Swamp lands and salt lands	24,772.09
Total	$4,716,219.76

The income [1] from this sum is $305,327.78. The common school fund derived from the sale of the original school lands is $4,120,857.83, and its annual proceeds $247,389.65; not an encouraging income from a princely estate embracing 750,000 acres, one thirty-sixth of the entire area of a great Commonwealth.

The school lands were grossly mismanaged, both in the leasing and the selling. No careful oversight was maintained, the Legislature carelessly enacting laws without inquiry into their effect. Much of the land was early occupied by squatters, who had no title whatever to it. They continued to control legislation for their own benefit, and secured leases for merely nominal sums. Members of the Legislature even had acts passed in their own behalf granting leases to themselves, and enabling them to obtain possession without adequate pay. One case is recorded of a Senator who managed to secure seven entire sections for himself and his family.[2]

The amount of this special legislation was really enormous. Nearly one-third of the acts passed between 1802 and 1835 pertained to the disposal of school lands. Amend-

[1] *Auditor's Report*, 1901, p. 12. [2] Atwater, *History of Ohio*, p. 253.

ments were made at every session, and the provisions grew so complex and the conditions so alarming that a committee appointed in 1821 by the House of Representatives reported, after one year's inquiry, that the lands must be sold, else "no good and much evil will accrue to the State from the grant of these lands by Congress." "Shall we proceed on, legislating session after session for the sole benefit of the lessees of school lands at the expense of the State? Or shall we apply to the general government for authority to sell out these lands as fast as the leases expire or are forfeited by the lessees? Or shall we entirely surrender these lands to present occupants with a view to avoid in future the perpetual importunity of these troublesome petitioners?" [1]

As a result of this report the Governor was empowered to appoint a commission of seven, who investigated the condition of the lands and formulated a system of education. The commission reported great waste committed in the school lands by the destruction of timber and the practical inutility of attempting to secure adequate returns under existing laws; they admitted that many of the acts passed were unconstitutional, and that the State was the trustee, not the owner, of the lands. They recommended that the lands be sold, and that general provisions be made for the organizing of public schools.[2] The report was tabled, but its contents were made a political issue in 1824, and a large majority of the newly elected legislators were friendly to its proposals. But the Legislature soon lapsed into its old habits, and the selling of the lands was conducted on the same principle of private gain as the leasing had been. In many of the townships, especially in the poorer and sparsely settled portions of the State, where the money was most needed for schools, the lands were sold for trifling sums.

[1] *House Journal*, 1822. [2] *Senate Journal*, 1825, p. 218.

The first report of Samuel Lewis, the first State Superintendent of Schools, cautioned the Legislature. "The tenant (of school lands) may surrender his lease, and on paying the former appraisement take a deed in fee simple for the land, sometimes worth six times as much as he pays. Cases have come to my knowledge where land has been taken at six dollars per acre worth at the time fifty dollars; the tenants, to be sure, make their fortunes, but the schools are sacrificed." [1] "School lands have been sold at less than a dollar, and in some cases at less than fifty cents an acre." [2] And he recommended that lands be placed in charge of one State officer, who should devote his time to the proper disposition of the lands.[3] Had this only been done the State might to-day have a splendid endowment for her public schools. But there was no disposition on the part of the lawmakers to place so much authority in the hands of one man.

SCHOOL TAXES

The income from the school lands has always proved inadequate for the support of the schools. There are two other sources of revenue for the common schools of the State, local taxes, and the State common school fund, raised by a State levy.

Local taxation was first developed. In 1821 [4] all property in any township or school district was made liable for school taxes, and the tax was limited to one-half the amount of county taxes. In 1831 [5] non-resident property holders were also taxed for the maintenance of schools. Amendments were made to this law in 1825,[6] authorizing the building of school houses, in 1827 [7] limiting the sum to be spent

[1] *First Report Supt. of Schools*, p. 41. [2] *Ibid.* [3] *Ibid.*, p. 42–3.
[4] 19 *O. L.*, p. 51. [5] 29 *O. L.*, p. 414.
[6] 23 *O. L.*, p. 36. [7] 25 *O. L.*, p. 65.

in repairing to three hundred dollars, and requiring a two-thirds vote to authorize even this expenditure. This was reduced to a simple majority in 1838.[1] This law also allowed the purchase of a site for school buildings, the custom having been to receive such site by gift. The purchase of furniture and fuel was likewise authorized by the same statute. It was usual, and made a duty in 1834, for each person sending a child to provide his portion of the fuel. However, no child was refused because of his parents' delinquency. In 1840 [2] the price of the fuel became a charge upon the parent or guardian refusing to furnish his quota, the directors being empowered to collect the money in the same manner as the district taxes.

Until 1838 the district taxes were collected by district collectors, but in that year the directors were empowered to authorize the county treasurer to collect them. But this provision lasted only one year, and a district collector was chosen until 1853,[3] when the township treasurer was made district tax collector. Previous to 1853 the directors had power to commute any tax for labor or material used in building the school houses, and by the act of 1827 [4] two days' labor could be taken in lieu of one dollar tax. This was reduced to fifty cents in 1831 [5] and to twenty-five cents in 1836.[6] The law of 1838 established no minimum.

Previous to 1838 there was no provision for an annual budget. Subsequent to that year it was prepared by the town clerk and voted on at the annual district meeting. Since 1848 [7] the district clerk makes the estimates; the maximum of the tax has usually been fixed by law, and has fluctuated greatly. In 1873 [8] it was fixed at seven mills, and subsequent legislation has practically maintained this

[1] 26 *O. L.*, p. 21.
[2] 38 *O. L.*, p. 39.
[3] 51 *O. L.*, p. 429.
[4] 25 *O. L.*, p. 65.
[5] 29 *O. L.*, p. 414.
[6] 34 *O. L.*, p. 19.
[7] 46 *O. L.*, p. 83.
[8] 70 *O. L.*, p. 195.

limit in all except city districts, and all districts may now vote to bond themselves for the purpose of erecting school houses.

From 1825 to 1853 a county school levy was customary. It fluctuated in amount from one-half mill to one mill. In 1839 [1] this was made optional, and less than one-fifth of the counties took advantage of it.

The first State school tax was levied in 1838.[2] The levy was one-half mill on every dollar of taxable property, and aggregated $200,000. In 1842 [3] it was reduced to $150,000, but raised in 1851 [4] to $300,000. The rate is now two mills. At various times revenues from sundry sources have been applied to the school fund, such as a tax on lawyers, physicians, peddlers and auctioneers.[5]

The following table exhibits the total receipts for school purposes in 1901:

From State school tax	$1,783,258.32
Income from lands	242,256.75
Local school taxes	11,351,986.77
From sale of bonds	1,067,493.19
From all other sources	860,250.06
Total	$15,305,245.09

This same year the average tax in township districts was 5.10 mills; in separate or special districts, 7.98 mills. The State levy was two mills.

THE DISTRICT

The simplest unit of Ohio's school system is the district. It remains to this day an almost independent unit, with complete authority vested in its School Board. The process of centralization has affected it only in the unifying of city schools and the creation of township districts. The latter

[1] 37 *O. L.*, p. 61. [2] 36 *O. L.*, p. 85. [3] 40 *O. L.*, p. 62.
[4] 49 *O. L.*, p. 40. [5] 42 *O. L.*, p. 38.

are not at all numerous, and the former constitute independent municipal districts. The history of the legislation enacted for the government of the districts is not simple. No definite policy was ever adopted by the State of Ohio for the regulation of its school system. Indeed, the policy of the State has hardly produced a *system*. Segregation of administrative functions and a continually fluctuating mass of legislation characterize the treatment of the problem of school administration. But through all the mutations of the laws the district has practically remained intact. Only the more important laws can be here cited.

Fifteen years before the first general school law was passed, the General Assembly provided that the trustees of "original surveyed" townships divide the same into suitable school districts in a manner "best suited to the convenience of the inhabitants." [1] In 1821 the trustees were made to submit the question of districting the township to the people, and if no vote was taken a neighborhood containing twelve or more households could petition for the creation of a district.[2] The administrative machinery of this primitive district consisted of a school committee of three, a collector, who also acted as treasurer, and a clerk, all elected at the annual district meeting. The law was optional, and Governor Morrow stated that this rendered it "nugatory." [3] This was cured in 1825 by making the law obligatory and withholding the school money from every township not properly districted.[4] The obligation remained unheeded, for this law was re-enacted ten times in the next twenty-six years, several of the acts setting time limits within which townships must be redistricted, but these hints were scarcely noticed, and the next session of the Legislature usually extended them to suit the delinquent trustees.

[1] 4 *O. L.*, p. 69. [2] 19 *O. L.*, p. 51. [3] *Annual Message* of 1823.
[4] 33 *O. L.*, p. 36.

The administration of school districts was not simplified by the acts authorizing the formation of districts from parts of different townships, and even parts of different counties, by joint action of the several boards of trustees. The first of these acts was passed in 1825,[1] and five subsequent acts continued the powers of the trustees to create or alter districts, so that considerable confusion has resulted. At present any district of the State can be altered by consent of the citizens of the district to be affected. It was at first the duty of the town clerk to furnish the county auditor with a map and census of the districts of his township, but in 1853 [2] this devolved upon the School Boards.

The officers of the district remained as in 1805, until 1825, when only three directors were chosen for one year. The term was extended to three years in 1842, and they were empowered to appoint a treasurer. Subsequently a clerk was chosen from among their own number, and the duties of the treasurer were performed by this clerk. In 1854 the office of treasurer was restored, but only for two years. Until 1853 all school offices were made compulsory upon those who had been duly elected, a fine being levied upon all who refused to serve.

During the first half century a great mass of special legislation was enacted, organizing all manner of special school districts. No attempt at uniformity was made, neither was classification undertaken. An exception, however, to this rule was the law of 1847,[3] passed for the city of Akron, and hence called the "Akron Law." It was made general the following year. This law made provision for the organizing of districts in all incorporated towns. It provided a Board of Education of six members, elected for three years, to have complete control of the schools. The entire corporation was made one school district. The board reported

[1] 23 *O. L.*, p. 36. [2] 51 *O. L.*, p. 72. [3] 45 *Local Laws*, p. 187.

annually to the City Council and to the county auditor. The acceptance of this form of school management was left optional with the municipalities, and only about one-half of them voted to organize under its provisions.

In 1851 [1] a general revision of the school laws wrought some changes in the country or township district. The annual district meeting elected three directors for three years, a clerk and a treasurer for one year; the directors had corporate powers and general supervision of school affairs and property and the school taxes. The clerk was the keeper of records, took the yearly enumeration of school children, and furnished the county auditor with the required statistics. The treasurer collected the taxes and reported to the county auditor, instead of the township treasurer. This law also was optional.

Up to this date, then, there existed three varieties of districts. First, the special act districts, depending upon special legislation. These comprised about one-third of the districts of the State. Their forms of administration were as various as their number. Second, the School Board districts, organized under the Akron Law. These comprised about one-half of the incorporated towns and a few unincorporated, for in 1849 the act was extended to all villages of two hundred inhabitants or more.[2] Third, township or director districts. These included mostly the rural districts, as well as many towns that had failed to take advantage of the "Akron Law" and were not organized as special districts. The "original surveyed" townships may be included in this group.

As the law of 1847 attempted to centralize the administration of the town schools in one School Board, so the law of 1853 [3] attempted to unify the schools of the township by creating one district of every township. The townships

[1] 49 *O. L.*, p. 27. [2] 47 *O. L.*, p. 45. [3] 51 *O. L.*, p. 429.

were termed districts, and the previously organized districts were called sub-districts. Each sub-district held an annual meeting as before and elected three directors, one of whom was to act as clerk and one as chairman. These were to have charge of all local or sub-district matters pertaining to the schools.

The township board consisted of the township clerk and the clerk of each sub-district. These were a body corporate, and had charge of all the school property in the township. They could create new sub-districts, had control of the township or union high school, where one had been organized, and had supervisory powers over the sub-districts. All the teachers in the township reported to the town clerk, and all the boards reported the required statistics to the county auditor. The consent of the electors was needed before a township high school could be established. A township budget was prepared by the board, and all funds were paid through the township treasury. This was a step toward centralization, but it was a compromise measure and never worked well, though it has not been wholly repealed.

The schools were practically under the control of two boards. "The constant conflict of authority between the members of the Board of Local Directors and the Township Boards was a constant annoyance and hindrance to effective work in the schools." [1] The hope that many township high schools would be organized under this act was not realized. Subsequent changes lessened the powers of the township boards, and by custom they became merely perfunctory bodies, the sub-district retaining the control of its schools. For a time the Township Board even appointed all the teachers for the township schools, but in response to popular clamor against "one man power" this provision was soon repealed, and the sub-district system continued under the

[1] *54th Report State Commissioner of Schools*, p. 34.

anomalous form of a township organization. Concerning the county schools, the State Commissioner affirmed in 1860, "Those best acquainted with these schools have little hope of improvement, to any great extent, so long as this sub-district system is continued." [1] In that year there were 3200 local directors and 1300 members of Township Boards, an unwieldy number of officials. Many of the schools were so small that both the hiring of efficient teachers and the continuing of school for the legal number of weeks seemed almost impossible. Often there were only eight pupils enrolled, almost one school officer for each pupil.[2] In 1892 [3] the Township Board was given the powers of the local directors, and thus the friction between the sub-district and township officers was stopped. The Township Board was especially authorized to appoint township superintendents and erect township high schools. The law was successful, and in three years several hundred townships had responded to the provisions for the organizing of graded schools. But the people again feared that the power given to the Township Board was too great, and in compliance with a general demand the law was revised in 1897, and so modified that the Township Board is now more an advisory than administrative body. Three standing committees are required by law, one on teachers and text-books, another on buildings and grounds, and a third on supplies. These committees can only recommend; the power of the Township Board is gone.

A more encouraging attempt to solve the problem of the rural school is the entire abandonment of the sub-districts and centralizing all the schools in one central building.

[1] *25th Annual Report*, p. 53.

[2] As early as 1851, there were 1,000 more districts in Ohio than in New York, though the latter State was older, and larger both in area and population.

[3] 89 *O. L.*, p. 93.

This was first attempted by Kingsville township, Ashtabula county, under special act of the Legislature. Later this act was made permissive for five counties enumerated in the law, and finally, in 1898, the law was made general.[1] It was amended in 1900, committing the question of consolidation to the voters. A Township Board of five members is elected at large for three years; the township clerk and treasurer are ex-officio members of this board. The board has complete charge of the schools, and awards the contract for conveying the children to the school house. The commissioner reports the satisfactory operation of this law.[2] It insures better schools, longer sessions, better attendance, more efficient instruction, better apparatus and libraries, and greater economy. It is, of course, optional with the communities whether they will consolidate their schools. The movement has not become at all general.

In 1873 [3] a new movement toward intricate and meaningless classification began, and this has reached a culmination in the law of 1890.[4] The following table exhibits this complexity of districts:

City Districts—
  First class, first grade, cities of 250,000 or more—Cincinnati.[5]
  First class, second grade, cities of 150,000–250,000—Cleveland.
  First class, third grade, cities of 100,000–150,000—Toledo.
  First class—10,000–100,000.
  Second class—under 10,000.
Village Districts.
Special Districts.
Township Districts.
Sub-Districts.

The city districts are all organized under their own re-

[1] 96 *O. L.* [2] *48th Report*, p. 18.
[3] 70 *O. L.*, p. 195. [4] 95 *O. L.*, p. 115.
[5] This classification is not based on census of 1900, but on the classification of cities. *Vid. Introduction.*

spective charters. The village districts have a board of three or six elected for three years. The special districts usually have a board of three directors. The township and subdistrict organizations have been explained. This classification is evidently an attempt to create general order out of a chaos of inconsistent special legislation.[1]

In the district legislation and administration two weaknesses stand out prominently; the more advanced provisions were usually made optional, and there has been little attempt to create a responsible administrative head with considerable power to enforce the laws or encourage advanced methods. While purely permissive legislation in school organization may be better than none, it requires the vigilance and interest of a competent overseer to give it widespread acceptance. Few of the permissive laws relating to school betterment have had a general adoption. Many were re-enacted, often a score of times, the laws of the State being congested with statutes relating to schools; but without adequate supervision their provisions have remained useless.

SCHOOL SUPERVISION

This leads directly to the vital point in school administration, viz., adequate and competent superintendence, both local and State. In both respects Ohio is found wanting.

STATE SUPERINTENDENCE

The first attempt at State supervision was made in 1837,[2] with the establishment of the office of Superintendent of Common Schools. The Legislature appropriated five hundred dollars for the salary and defined the duties of the officer. These were mainly the gathering of information

[1] In 1850, there were passed 58 local school laws; a fair average of the Legislature's work.

[2] 35 *O. L.*, p. 82.

and the suggesting of a plan for the betterment of the schools. The first superintendent appointed by the Legislature was Samuel Lewis. He entered upon his duties the same year that Horace Mann assumed a similar office in Massachusetts. His strong personality, great industry, comprehensive mind and winning eloquence allied him to the famous New England champion of free schools. And there can be no doubt that his influence has to a large degree shaped the school system of the State. His first and second reports take rank among the educational papers of our country, and they were printed in a number of the Eastern States. They emphasized at once the faults of the schools and their remedies, and outlined a system of education well in advance of the ideals of that day, and unto which the State has not yet attained.

Excepting the disposition of the school lands and the enacting of special school laws, very little had been done toward establishing a State school system prior to 1836. The act of 1821 was so indefinite in its provisions, and purely optional upon localities, that it remained a dead letter. In 1826 the Governor complains of the delinquency of the State in educational matters. "Measures for improvement in their regard have been a standing theme of executive communication, ever since the commencement of our government." [1] This complaint was repeated annually, and ten years later the Governor's message affirmed that "Our system of education is languishing in proportion to our other improvements," [2] and he recommended that the members of the Legislature read Victor Cousin's report on European education, which had recently been published, and that they act accordingly. This was a lofty ideal for that body, accustomed to playing with educational matters. It however authorized the publishing of the school laws; and learning

[1] *Senate Journal*, 1826, p. 8. [2] *Ibid.*, 1836, p. 11.

that Professor C. E. Stone, of Cincinnati, was about to start for Europe they requested him to gather information concerning the school systems of the Continent. His report was published by the State in 1838. It dealt with the training of teachers and school discipline rather than administration. It had no direct effect upon the Legislature. At the time, then, of the creation of the office of State Superintendent of Schools, such public schools as had been established were practically waifs, neglected by the State and poorly cared for by the localities.

There was no standard of education. Every locality was an authority unto itself, and since there were no means provided for the enforcement of such laws as had been enacted, they were allowed to remain unenforced. There were very few localities in the State where the free schools provided proper instruction even in the common branches. The better schools were not free. "In one town a free school is taught three months in the year by one teacher in a district where more than one hundred children desire to attend; they rush in and crowd the school so as to destroy all hope of usefulness; the wealthy and those in comfortable circumstances seeing this, withdraw their children or never send them; the school thus receives the name of a school for the poor and its usefulness is destroyed." [1] This was typical of nearly all the schools of the State. It was the rule to keep school as long as the State money lasted, and then those who desired their children to continue, were charged a tuition, and the children of the poor were left uncared for. In most of the districts accommodations were not large enough for all and the poor were crowded out, the teacher naturally favoring those who paid tuition.

In other localities the teachers received a portion of the public money at a fixed rate per scholar, which they de-

[1] *First Report Supt. of Schools.*

ducted from the price of tuition. This virtually made a private school. In other districts the school money was kept for several years, until enough had been accumulated for conducting a free school from three to six months in one year, so that the school was taught only one year in two or three. The average number of weeks that school was conducted was less than twenty. The education of women was almost entirely neglected. The provisions of the law granting power to the districts to tax themselves for school purposes were rarely availed of, and the money derived from the school lands was wholly inadequate for the support of the schools. The State fund was distributed according to the valuation of the district, not according to the number of pupils; thus a few of the townships received four dollars per scholar while others received less than ten cents per scholar.

The administrative machinery of the districts was irresponsible and inordinately clumsy. In 1836 there were 7,748 districts and 38,740 school officers. Their power was very limited, both in regard to locating schools and hiring efficient teachers and levying taxes. Yet the amount of ministerial detail prescribed for them was so great that "the amount of time now required by law, if the officers did their duty, will, if computed at the average price of a day laborer, amount to a heavier tax than is assessed in money for the support of the school." [1] Neither was there uniformity in the size of the districts. Many were too small, and their boundaries so loosely fixed that it was difficult to properly tax them for school purposes. Whenever a school house became crowded it was the custom to divide the district. Many of them were formed of parts of several townships in adjoining counties, so that some district treasurers were compelled to go to two county seats, sometimes traveling one hundred miles to get ten or twenty dollars.

[1] *First Report Supt. of Schools.*

It was the custom to depend on gifts for school houses and sites, or if these were not forthcoming to wait until enough money had accumulated to pay for a building, which was usually miserably built. There was no public interest in the schools; the directors were accustomed to hold office without re-election, and district treasurers often received funds for their districts when no schools were kept in those districts. In some localities elections had not been held for years, the old officers continuing to serve, and no reports were made by them to any one as to the disposal of the public moneys entrusted to their care. All of these conditions led to the establishing of private schools and academies. In Cincinnati alone there were one hundred such schools in 1837.[1] The first report of the superintendent recommended that these defects be remedied by specific legislation. His principal suggestions were:

a. That the schools be made free.

b. That the number of school officers was too great and their powers too limited.

c. That the school districts should be uniform and their boundaries fixed.

d. That the township be made the unit of school administration; the township clerk to be the clerk of a Township Board to be elected; the township treasurer to have in charge all the school funds; and the Township Board to be empowered to establish a high school or academy and night schools, and adopt uniform text-books for the entire township.

e. That a school fund be created by direct tax.

f. That the building of school houses be simplified by permitting each district to borrow the money necessary for that purpose.

[1] Atwater, *Hist. of Ohio*, p. 297.

g. That the office of County Superintendent be established.

h. That the County Courts appoint Boards of Examiners to examine teachers, and that a Normal School be established.

i. That the powers of the State Superintendent be increased to give him centralized control over the entire system of education.

j. That the legislation enacted be final for a definite period of time, the fluctuating policy of the Legislature working much harm throughout the State.

k. That the law prescribe the number of weeks the schools should be in session, and compel the attendance of children.

As a result of this report the law of 1838 was passed. It embodied only a few of the above suggestions. The schools were declared free. The district officers were to be elected at an annual district meeting. The township treasurer was made responsible for the school funds. The districts were allowed to borrow money to build school houses. The town clerk was made superintendent of schools in his township, with power to visit each school at least once a year and examine it, and he could fill vacancies in local boards. He reported to the county auditor, who was made the County Superintendent of Schools. The salary of the State Superintendent was raised to twelve hundred dollars, and he was invited to suggest a plan for establishing a State Normal School. The superintendent the following year visited every county in the State, no small task in those pioneer days, and what influence the law withheld he more than supplemented by his personal enthusiasm and tireless energy. The results showed what even limited supervision can accomplish.

Mr. Lewis resigned after three years of labor. His work had not been appreciated, and his health was broken down

because of the constant exposure to which his work committed him. During his term of office 3,265 school houses were built, the number of schools increased from 4,336 to 7,295, and the value of their property from $61,890 to $206,445. The enrollment was doubled, a State school tax was levied, the amount paid for tuition increased from $317,730 to $701,691, teachers' institutes were organized, the State school laws were codified and printed, a State educational journal was published, a uniform reporting system was inaugurated, and public interest awakened in the free schools.

There was much agitation against the law of 1838 because of its radical nature, and this favorable beginning was checked in 1840 by the abolition of the office of State Superintendent,[1] the duties of the office being transferred to the Secretary of State, who was allowed four hundred dollars annually for extra clerk hire. In reality the additional clerk became the head of the State schools, and his activities were chiefly the gathering and compiling of statistics. The other duties of the Secretary of State were ample enough to engage all his time. There was an immediate falling off in school efficiency and interest. By 1844 only a little over half of the counties reported; the lack of State supervision was reflected in the inefficiency of township and county superintendence. Teachers' institutes declined.[2]

Samuel Galloway was the first of the Secretaries to face the problem. He clearly describes the situation in his first report: "No other interest of the State has been so fearfully neglected, and any other visited with such chilling indifference would have hopelessly perished. The common school system was started under favorable auspices, and enjoyed, during the earlier stages of its infancy, the kind protection of 'nursing fathers and nursing mothers.' But for a few

[1] 38 *O. L.*, p. 130. [2] *Executive Document*, 1844, No. 31.

years past it has been doomed to an orphanage—gradually deepening into the bitterness of its destitution. Condemned by many, neglected by all, and actually patronized by but few, it must sink into insignificance, unless it is speedily quickened by the impulse of a new life . . . . the principal obstacles . . . . are the inefficiency of township and district superintendents, the incompetency of teachers, and the absence of action, sympathy and interest on the part of the parents." [1]

Mr. Galloway proved that even a superintendent without legal powers can do great things in school organization if possessed of ability and enthusiasm. The response came from the teachers and parents, not from the Legislature. The teachers of the State organized a State association in 1847. They repeatedly petitioned the Legislature to recreate the office of State Superintendent. Failing in effecting this they raised the money among themselves to pay for State supervision, and elected one of their number as State agent, or missionary, to work principally in arousing the parents to co-operate with the teachers. In contrast to the salary paid Samuel Lewis were the three thousand dollars they paid to this voluntary superintendent. Thus was the lack of State centralized control supplemented by voluntary action on the part of private individuals. In 1850 the Legislature created a State Board of Instruction, to be appointed by the Legislature, which should have thorough supervision over the schools, the examination of teachers and the disbursement of the school fund. But the law remained a nullity for the peculiar reason that the Legislature never appointed the board.

In 1853 [2] the office of Superintendent of Schools was renewed under the name of "State Commissioner of Common Schools." The Commissioner is elected for a term of three

[1] *Report Sec. State*, 1844, p. 5.

[2] 51 *O. L.*, p. 429.

years, and his salary at present is $2,000 a year. He is required "to spend annually at least ten days in each judicial district of the State, superintending and encouraging teachers' institutes, conferring with township Boards of Education or other school officers, counseling teachers, visiting schools, and delivering lectures on topics calculated to subserve the interests of popular education." [1] He is given power to purchase libraries for township schools, to prepare forms for making school reports, to distribute the school laws, to require county auditors or any other school officers to furnish him with such information regarding schools as he may require, and to have general supervision over the school fund. He reports annually to the Governor, and appoints the State Board of Examiners. In 1872 he was empowered to order a new enumeration of school youth whenever he thinks that errors in previous enumeration make it essential.[2]

His most important duty is the supervision of the State school funds. The act of 1872 requires [3] that he shall exercise "such supervision over the educational funds of the State as may be necessary to secure their safe and right application and distribution according to law." Upon complaint being made under oath by three freeholders of a district concerning a wrongful use of school funds, the State Commissioner must institute an investigation. An adverse report is given to the grand jury. Since the revision of the compulsory education act in 1893 [4] the State Commissioner sends to the local boards throughout the State "regulations and suggestions for the instruction and guidance" of the local board, teachers and officers charged with the enforcement of the law. Although the issuing of these regulations is obligatory upon the commissioner, the officers are not bound to follow them.

[1] 51 *O. L.*, sec. 50.
[2] *Ibid.*, sec. 106.
[3] 70 *O. L.*, p. 195.
[4] 90 *O. L.*, p. 285.

The State Commissioner is in reality not a superintendent at all. His title is not a misnomer. His power is moral. He cannot compel obedience. The high degree of centralized supervision as developed in New York, Massachusetts and nearly all other States has not been approached in Ohio.

LOCAL SUPERVISION

Nor has the State evolved an efficient system of county and township supervision. Since the passage of the "Akron Law," municipalities have had city superintendents. The laws now in force place the schools in the complete control of the Boards of Education, and these prescribe the powers of the local superintendent. No doubt much of the efficiency of the Ohio schools is due to these local superintendents. They aid in training their teachers, thus supplying a need the State has long neglected; they are the skilled advisers of their Boards of Education on all matters pertaining to schools; they conduct teachers' institutes, and they set the standard for teachers' examinations, a function not yet undertaken by the State. The plan of making the township clerk the superintendent of the township schools, as attempted in 1838, did not work. The reports of the State Superintendents are uniform in their complaints that the town clerks do not visit the schools, and fail to exercise any supervising influence. In later years, in those townships that have adopted the township plan and have centralized their schools, centralized supervision is secured through the township principal.

County superintendence has been the continual demand of the educators since the establishment of free schools in the State. It is significant that from the first report of Samuel Lewis to the last report of the present State Commissioner, the one request made of the Legislature, persistently and earnestly, has been for adequate county supervision. Gov-

ernors have joined in the demand, often devoting many paragraphs of their annual messages to the subject. The State Teachers' Association and the various county associations have repeatedly petitioned for it. But to all these influences the Legislature has remained irresponsive.

The law of 1847 [1] is the one exception. This authorized the county commissioners to appoint a county superintendent of schools, if they wished. Only three counties ever availed themselves of this opportunity. Perhaps the Legislature is not so much at fault as the local authorities. The county commissioners are an elected board, and hence dislike to incur the displeasure of their constituents by increasing the tax to the amount necessary to pay for county supervision. This law has not been repealed. I find no record that any county auditor ever actively supervised the schools of his county as provided by the law of 1838 and several subsequent enactments. The auditors even neglected the making of required reports to the State Superintendent. In order to secure statistics it became necessary to compel the teachers to report to the district treasurer before they could draw their quarterly pay.[2]

Concerning the situation, Governor Cox made the following recommendation in his message of 1866, after careful personal investigation: "I believe that a great majority of the most active and intelligent friends of our common school system have become convinced that the administration of school affairs should be separated from the ordinary township and county offices, and that county superintendents of schools are necessary to give the greatest validity to the system, not only by guiding the general instruction and discipline of the several schools, but in personally attending to the collection of those reports of facts upon which gov-

[1] 45 *O. L.*, p. 67. [2] 46 *O. L.*, p. 28.

ernmental action is based." [1] Reference is continually made in the reports of the commissioners to the educational systems of New York, Pennsylvania and Massachusetts. Perhaps no better evidence can be gathered of the need of centralized supervision in school matters than the reports of the commissioners. Their general tenor is shown by the following extracts:

"The weakness of the Ohio school system, so far as the county schools are concerned, lies in the lack of system and superintendence." [2]

"Responsibility of school management should be fixed somewhere." [3]

"Other States have gone on improving and perfecting their school system while Ohio, from this date of mark (1838) has seemed almost to stand still. In essentials she has done nothing in the way of legislation within the last thirty-five years. Indeed in one important particular, the township schools have retrograded; for under the law of 1853, each school district was entitled to a free library." [4]

"Intelligent friends of education, from all parts of the State call for something to be done in this direction." [5]

"The two imperative needs of the rural school are professional training for its teachers, and intelligent and efficient school supervision." [6]

"The fact that Ohio is to-day almost the only State in the Union without some kind of supervision for the county schools is due very largely to the fact that for forty years these schools were under the control of two Boards of Education—the result of a compromise between those favoring the sub-district as an educational unit, and those who be-

[1] *Executive Documents*, 1866, vol. i, p. 278.

[2] *31st Report of State Commissioner*, p. 5.

[3] *32d Report of State Commissioner*, p. 3. [4] *Ibid.*, 35, p. 17.

[5] *Ibid.*, 37, p. 15. [6] *Ibid.*, 44, p. 34.

lieved that the township should be the unit of organization." [1]

"Ohio can never have a school system commensurate with her greatness as a State, until she has placed her country schools under intelligent supervision." [2]

This lack of legal supervision is somewhat offset by the activity of county teachers' institutes and the exercise of careful judgment by the Board of County Examiners.[3]

COMPULSORY ATTENDANCE

The problem of school attendance was not attacked by the State until 1877, when the first compulsory educational law of the State was passed.[4] It required parents to send their children between the ages 8-14 to a common school at least twelve weeks in a year, unless excused for certain reasons by the Board of Education, but its exceptions were broad, and no proper authority was designated to secure its enforcement. The result was that it was only partially successful in reaching the large number of truants. The revision of 1889[5] made the law more comprehensive. All children between the ages of eight and fourteen are now compelled to attend school twenty consecutive weeks in the year in city districts and sixteen weeks in the township districts, unless excused by the superintendent of schools in the city or Board of Education in the county. All minors over fourteen and under sixteen who cannot read or write are compelled to attend school at least one-half of each day, or such evening schools as may be provided by the Board of Education.

All habitual truants are deemed juvenile delinquents, and may be sent to the State Reformatory. Failure on the part of the parents or guardian, or of employers of children, to

[1] *54th Report of State Commissioner*, p. 6. [2] *Ibid.*, 36, p. 5.
[3] *Ibid.*, 39, p. 17. [4] 74 *O. L.*, p. 57. [5] 86 *O. L.*, p. 333.

comply with these provisions is made a misdemeanor. The enforcement of the law is entrusted to the Boards of Education. In cities truant officers are elected who have the powers of constables. In villages and townships the Boards designate a constable to enforce the law. These officers have power to enter the home or place of employment and compel the child to attend school. The truant officers report daily to the superintendent of schools and the clerk of the board. All teachers likewise report all cases of delinquencies to the clerk. An amendment the following year made all youth between the ages of eight and sixteen, who are not engaged in regular employment, subject to the law.[1] In 1893 appeal was granted, in case the superintendent of schools or the Board of Education refuse to excuse a child from school, to the Probate Judge.[2]

Employers may now make provision for private instruction of minors employed by them, subject to the supervision of the local superintendent of schools or the clerk of the Board of Education. The fines for violations have been greatly increased, and have been extended to teachers and salaried officers who fail to comply with the provisions of the law. The truant officer, instead of the Board of Education, now institutes proceedings against parents, guardians, employers and juvenile delinquents. Over the latter the Probate Judge has final jurisdiction. The other cases may be heard before any magistrate. The results of the law are shown in the table on page 74. Since 1894[3] women have been eligible to positions on the Boards of Education, and allowed to vote for members of the board. They evince a keen interest in all matters pertaining to the schools, and their influence has been particularly potent and wholesome in the organization of city boards.

[1] 87 *O. L.*, p. 316. [2] 90 *O. L.*, p. 285. [3] 91 *O. L.*, p. 260.

THE TRAINING AND EXAMINING OF TEACHERS

Until 1825 no fitness for teaching seems to have been required, unless the parents themselves established the standard. In this year the Courts of Common Pleas were empowered to appoint three examiners. The number of examiners fluctuated until in 1836 [1] there were three in each township. But scarcely any attention was paid to these provisions, as they were purely optional. There was constant complaint that good teachers could not be found. Teaching was not looked upon as a profession, and the compensation was so slight that "men of learning, talent and moral character" would not engage in it.[2] Reading, writing and arithmetic were the only branches taught in the district schools, and when, on the recommendation of the State Superintendent, English grammar and geography were added, there were only a few districts in the State that could find teachers prepared to give instruction in the new branches. The majority of the district directors disregarded the law, and many forbade any branches being taught except reading, writing and arithmetic.[3] The examinations were not rigid or systematic. They were provided merely because a certificate from the examiners was necessary before the teacher could draw pay. There were very few teachers' associations or institutes. There was utter lack of method in teaching, barbarous methods of punishment were in vogue, attendance at school was very irregular, and the changes of teachers were frequent.

In 1849 [4] a re-enactment of the law requiring directors to add grammar and geography to the curriculum, under pain of withholding their district's share of the State fund,

[1] 34 *O. L.*, p. 330. [2] *First Report Supt. of Schools.*

[3] *Executive Documents*, 1845, Part 1, p. 33; *School Report, Sec. of State.*

[4] 47 *O. L.*, p. 43.

produced considerable hardship, and deprived many districts of schools because of the difficulty of obtaining qualified teachers.[1] This was the low water mark of Ohio's public schools. The average monthly salary of the district school teacher at this time was $14.33⅓ for men and $1.82 for women.[2] The superintendent of schools in Cincinnati received $700 a year, and the superintendent of schools in Akron $500 a year. Attendance was rapidly falling off and private schools were multiplying. The State had forgotten its pledge to the National Government in accepting the school lands. The condition of the schools reacted upon the quality of the instruction and the status of the instructor.

In 1853, after the adoption of the new Constitution, the Board of School Examiners, composed of three members, was appointed by the Probate Judge, and orthography was added to the requirements for a teacher's certificate, and, as has been mentioned, State supervision was restored and a limited township system was introduced. This marked the beginning of a new growth in the schools and a gradual betterment in the qualifications of the teachers of the State. In that year the average yearly wage of teachers was $59.72. This had increased to $99.44 in 1858. In 1865 the average monthly pay for male teachers was $36.25 and for female $21.55. In 1864[3] theory and practice of teaching was added to the requirements for a certificate.

The law of 1873 provides for examinations in special branches, and physiology, United States history and civil government are now required with the common branches. Between the various county boards of the State there is no uniformity, except in the subjects required by law. A certificate granted in one city is not valid in another. Often

[1] *School Report, Sec. of State*, 1850.

[2] *Ibid.*, 1848, p. 36.

[3] 61 *O. L.*, p. 37.

candidates who have failed to pass the examinations in one county are successful in an adjoining county. In 1892 a law was passed empowering the commissioner of schools to prepare uniform questions for all the counties of the State, but the Legislature that passed the law failed to appropriate money for having the questions printed, and the law remains inoperative. County certificates are granted for one, two, three, five and eight years. About fifty per cent. of the applicants for certificates are rejected.

In incorporated cities the Boards of Education appoint boards of three examiners to examine teachers for the schools of the corporation. A county certificate is not valid in municipalities, even if located in the county wherein the examination was taken. About 10 per cent. of the applicants fail. In 1864 [1] the State Commissioner was empowered to appoint a State Board of Examiners to be composed of five members; they were to receive five dollars a day and traveling expenses. Three grades of certificates are granted, common school, high school and special. These certificates are for life, and the applicant must have had fifty months' experience in teaching. The board was unpopular at first, and its examinations were poorly patronized. Only about twelve applicants were examined yearly. The number has gradually increased, and now about one hundred are examined annually. Of these rarely any fail to pass.

The percentage of failures is the only index we have of judging the efficiency of the examinations, and this is not a satisfactory method, for it depends quite as much on the preparation of the applicant as on the thoroughness of the examination. It still remains true that "the history of legislation in Ohio regulating the examination and certification of teachers is a dreary history—evidently to be continued." [2]

[1] 61 *O. L.*, p. 33.

[2] *44th Report of Commissioner of Schools*, p. 33.

There had been no State training in normal work until the year 1902, when there were created normal departments under State tutelage at Ohio University and Miami University. Many of the large cities have established normal schools, which are more properly training places for recent high school graduates. The need for a State normal school has also been continually set forth in the Commissioner's reports. "Ohio still remains one of the five or six States out of the forty-two that have no State normal schools." [1] Teachers' institutes offer some training for teachers and help in centralizing school sentiment and creating a standard of work.

The first institutes were voluntary associations, maintained by the teachers of the more populous counties. In 1837 [2] the excess moneys of each county's share of the United States surplus funds, distributed by Congress among the States, were devoted to teachers' institutes. The distribution of surplus ceased in two years, and with it county aid for institutes, until in 1849 the county commissioners were empowered to appropriate one hundred dollars for teachers' institutes.[3] This provision was repealed in 1873, and the only county moneys that were appropriated for institute purposes until 1890 were the fees paid by applicants for the county examinations. In 1890 the dog tax was placed to the credit of the school fund, and in 1896 the organization of county institutes was made more permanent, and received the sanction of law by provisions that detailed the manner of organization. An executive committee is elected annually, and the members of said committee are placed under bonds for the proper use of the institute moneys.[4] The larger cities provide annual institutes for their teachers. Attendance upon these is required.

[1] *36th Report of Commissioner of Schools*, p. 12. [2] 35 *O. L.*, p. 97.
[3] 47 *O. L.*, p. 19. [4] 92 *O. L.*, p. 11.

The State Teachers' Association, organized in 1847, has been a very important centralizing factor, supplying to some degree the needed superintendence, and co-ordinating the school work of the State. But its influence has been mainly with the city schools, from which it draws its officers and attendance. No State funds are available for its use. There are also several district educational associations. All of these teachers' meetings have to some extent supplied the want of normal training.

OTHER CENTRALIZING INFLUENCES

A larger centralizing factor is the "Ohio Teachers' Reading Circle," conducted under the care of the State Commissioner. In 1894 this circle had 2,500 members, and eighty of the eighty-eight counties were organized. Each circle elects a secretary and president, and these keep in touch with the State officers. Diplomas are issued by the State Board of Control, after four years of study, but only on recommendation of the county Board of Examiners.

Another centralizing factor is the traveling library system of the State. From 1854 to 1859 the State invested $300,000 in township libraries. Owing to lack of supervision nearly all of the 400,000 volumes purchased were lost in a few years. The law creating the library fund was repealed in 1860, and no provision was made for supplying the rural districts with books until 1896, when the State librarian inaugurated a system of traveling libraries that has had a phenomenal growth, as shown by the following table:

Traveling libraries issued from Ohio State Library:

	Libraries.	*Volumes.*
Prior to Nov. 15, 1896	2	50
Nov. 15, 1896, to Nov. 15, 1897	62	1,331
Nov. 15, 1897, to Nov. 15, 1898	379	9,887
Nov. 15, 1898, to Nov. 15, 1899	445	12,812
Nov. 15, 1899, to Nov. 15, 1900	711	19,505
Nov. 15, 1900, to Nov. 15, 1901	762	20,689

Traveling libraries issued within the year Nov. 15, 1900, to Nov. 15, 1901, were distributed as follows:

To schools	251
To independent study clubs	224
To women's clubs	118
To religious organizations	50
To granges	100
To libraries	19
Total	762

The report of the librarian shows that each book is issued about ten times. The circulation for 1901 was therefore 206,890. "More than three-fourths of these libraries have been sent to rural communities and small villages that have no libraries. Many have gone to schools or granges remote from city or town." [1] "Its influence has been felt in every county. It is gradually taking an important place among the educational agencies of the State." [2] Any library in the State may now borrow books of the State library, and many of the lesser towns find this provision very helpful.

Still another indication that the State is tending toward more centralized administration in school affairs is the "Boxwell law," and its recent amendment, the "Patterson law." The Boxwell law,[3] passed in 1892, provides for an examination, held by the county Board of Examiners, in all the common branches, the examination to be of such a character as to enable the successful applicant to enter any high school in the county. The examination is open to all pupils of the public schools, but is meant especially for children in the rural districts. To every successful applicant, who "shall deliver an oration or declamation, or read an essay in some public place provided by the Board of Education, a diploma shall be formally presented," which shall admit the pupil to any high school in the county, and his tuition is

[1] *54th Annual Report Commission of State Library.* [2] *Ibid.*, 56.

[3] 89 *O. L.*, p. 123.

paid by the Board of Education of the township in which he lives. The "Patterson" amendment [1] made provision for uniform examination questions, to be prepared by the State Commissioner of Schools, the local board to pay for the printing. The diploma admits to any high school of the State without examination, and free tuition is provided for the pupil only if no high school is located in his own township. In that case, however, the Board of Education may enter into contract with any high school for the payment of such tuition. If such an arrangement is not perfected the pupil may select any high school he desires. The State Comissioner is also empowered to determine what schools are "high schools." The following table exhibits the working of this law:

Year.	*Number Examined.*	*Number Passed.*
1892	2,131	1,341
1893	4,434	2,431
1894	4,653	2,289
1895	5,829	2,735
1896	5,739	3,077
1897	7,572	3,314
1898	8,936	3,966
1899	10,256	4,487
1900	11,623	4,693
1901	13,243	5,372
Total	74,416	33,705

In 1890 a singular measure passed the General Assembly that also indicates a tendency toward unification of school matters.[2] The Governor, the Commissioner of Schools, the Supervisor of Public Printing and two men appointed by the Governor, one to be a "practical educator" and the other a "practical business man," one from each of the two leading political parties, were constituted a "State School Book Board." They were required to receive bids: First,

[1] 95 *O. L.*, p. 71. [2] 87 *O. L.*, p. 377.

from publishers to furnish books to the Boards of Education of the State. Second, from authors who have manuscripts not yet published. Third, from such persons who think they can "compile" a text-book or series of texts "similar or equal to that of the best books now in use." The publishers were to furnish sample books with their bids; the two other classes of bidders were to present the merits of their products to the board in the form of an analysis. The required bond of $10,000 probably prohibited any prospective authors and compilers from bidding, as proposals were received only from publishers. The following year it was attempted further to tempt prospective authors by enumerating specifically what text-books were wanted, and stating what specifications of his work the prospective compiler should exhibit. The series was to be called "The Ohio Series," and "a portion of the illustrations, designs or pictures in said series of books shall be of Ohio scenery, schools, school houses, school rooms, in complete illustration of our public school system."[1]

Despite its anomalous character, the law has been a success. The board has dealt only with publishers, and enters into contract with any firm that gives the required bond and reduction in its prices. There is really no uniformity in the books used, as in 1899 eighty-five firms agreed to comply with the requirements of the law. The purposes of the law are not so much the establishing of uniformity as the lessening of the cost of the books and the protecting of the public against frequent and unnecessary changes. A School Board having once adopted a book must retain it for five years. At present the clerk of every Board of Education in the State makes a list of the books required for the ensuing year. The State Commissioner arranges a "List of State Contract Prices" every year, from which local boards make their selection. The board then has its choice of three meth-

[1] 88 *O. L.*, p. 568.

ods of proceedure: it may order the books direct and distribute them to the pupils at net contract price, or it may choose an agent to secure the books, who is to charge a price not exceeding 10 per cent. of the contract price; or, finally, the board may allow retail dealers to furnish the books, in which case also 10 per cent. of the contract price may be added. In 1893 the State Commissioner said this law "has proved one of the most satisfactory in the history of the State." [1]

One more indication of the trend toward more centralized administration in school affairs remains to be considered. It is perhaps the most important, as it is also the most recent. At its last session the General Assembly revised the school laws. While the administrative officers and their duties remain as formerly, an attempt was made to classify the schools of the State, as well as the districts;[2] they are divided into elementary schools, high schools and colleges. An elementary school is one "in which instruction and training are given in spelling, reading, writing, arithmetic, English grammar and composition, geography, history of the United States, including civil government, and physiology. Boards of Education may add drawing, music and other branches.

A high school is "a school of higher grade than an elementary school, in which instruction and training are given in approved courses in the history of the United States and other countries; composition, rhetoric, English and American literature; algebra and geometry; natural science, political and mental science, ancient or modern foreign languages, or both; commercial or industrial branches, or such of the above named branches as the length of the curriculum may make possible, and such other branches of higher grade than those to be taught in elementary schools, and such advanced studies and advanced reviews of the common branches as

[1] *41st Report State Commissioner*, p. 8. [2] 95 *O. L.*, p. 115.

the Board of Education may direct." High schools are divided into three grades, according to the length of the curriculum:

Grade one, having a four years' course, not less than thirty-two weeks a year.

Grade two, having a three years' course, not less than thirty-two weeks a year.

Grade three, having a two years' course, not less than twenty-eight weeks a year.

Any holder of a diploma from a high school of the first grade is entitled to entrance, without examination, to any college of law, medicine, dentistry or pharmacy in the State, if the holder has completed the necessary work in natural science and languages usually required by such schools. Privately endowed schools are excepted from this law. And any holder of a diploma from any high school, or of a teachers' certificate, when he has studied under private tutelage, may take the bar examination, or may be examined for admission to any technical school in the State, excepting privately endowed institutions. The State Commissioner of Schools has the power to classify high schools, and withhold certificates of classification from any he deems unfit.

A college is defined as "a school of a higher grade than a high school, in which instruction in the high school branches is carried beyond the scope of the high school, and other advanced studies are pursued, or a school in which special or technical studies are pursued, and when legally organized has the power to confer degrees in agreement with the terms of the law regulating its practice or its charter; or in the want of legislative direction in agreement with the practices of the better institutions of learning of their respective kinds in the United States."

While these definitions are crude, they indicate a distinct desire for system and control, not only of the elementary

schools, but also of the secondary schools and even the colleges.

The same statute has given important powers to the local Boards of Education. Any Board of Education has now authority to establish one or more high schools whenever it deems it necessary. Township boards have the same power over high schools as city boards, and may assess a tax not to exceed ten mills on the dollar for school purposes. And the Boards of Education in any special or township district may suspend school in any sub-district when deemed wise, and provide transportation for the children to some adjoining district or districts. This will help dissolve many of the smaller sub-districts.

HIGHER EDUCATION

The development of higher education in the State evidences the same decentralization, indifference, substitution of private for State initiative, and a later tendency toward more uniform control, that is seen in the history of the public schools.

The two townships in the Ohio Company's Purchase set apart for higher education formed the endowment of Ohio University, organized at Athens in 1804.[1] The Legislature appointed the Board of Trustees and regulated the leasing of the land. At first the land was leased for 6 per cent. per annum on its appraised value, appraisals to be taken every thirty-five years, and the leases to cover ninety years. The rentals never were adequate to supply the needs of the school, and the trustees were authorized to take farm products in lieu of money for the yearly rent, and to establish a lottery in order to raise money for a new building,[2] and after various other attempts to put the college on a good financial basis the lands were sold in fee simple in 1826.[3] They did not bring their market value, the sale being grossly

[1] 2 *O. L.*, p. 193. [2] 16 *O. L.*, p. 16. [3] 24 *O. L.*, p. 52.

mismanaged,[1] and the Legislature was petitioned yearly to help its struggling university. Occasional appropriations were made, but these were few and never large. The report of the trustees in 1827 shows a total income of $3,672.58 and a total expenditure of $4,066. In 1837 $5,000 was loaned the university, and it later became customary for the trustees to ask for appropriations to cover the yearly deficits.

The townships in the Symmes tract set aside for an academy formed the original endowment of Miami University, organized in 1809 [2] in the town of Oxford. The land was made a trust fund, the Legislature acting as trustee. The first school was opened in 1816, after much bickering about the disposal of the lands. The customary method of renting was tried, at first on a re-valuation every fifteen years. In 1810 [3] the appraising clause was repealed, and in 1812 a law was passed providing that the actual settlers, from a given date and *forever after,* pay an annual rental of 6 per cent. of the purchase money.[4] This almost criminal piece of legislation forever debarred the university from securing a just revenue from its 22,638 acres. By 1866 the university, weary of having its annual petitions ignored by the Legislature, devised a plan for raising endowments, inviting the various religious bodies of the State to establish chairs, thus adding one more to the already numerous denominational colleges. There was but slight response to this appeal.[5] The university attempted to secure at least a portion of the United States grant for an agricultural and mechanical college, and thus establish an agricultural department, but the Legislature did not approve of this plan.[6]

[1] *Executive Documents,* 1850, vol. i, no. 19.

[2] 7 *O. L.,* p. 184. [3] 8 *O. L.,* c. 23.

[4] The law provided that no land was to be sold under $2.00 an acre, and the entire tract sold at practically this rate. 7 *O. L.,* p. 184.

[5] *Executive Documents,* 1866, vol. ii, p. 540. [6] *Ibid.,* 1869, vol. i, p. 924.

These two State schools now became the object of executive solicitude. The Governor's message in 1872 affirmed that they "are now in a very feeble condition, and unless something is speedily done for them by the State their doors must soon be closed," and he suggested that they be transformed into normal schools. The following year Miami University was compelled to suspend for want of funds, and remained closed until 1885; during the interval its annual rentals were placed at interest and its buildings used as a private academy. The State had never appropriated any money to this institution, not even paying the expenses of the trustees. The theory seemed prevalent that after the Legislature had permitted its *cestui que trust* to be robbed of its lands it fulfilled its entire obligations by appointing a Board of Trustees.

Ohio University was by this time likewise on the verge of ruin. Its buildings had so fallen to decay through the neglect of the State that it was doubted whether they could be repaired. There were as many members on the Board of Trustees as on the Faculty; the attendance had dwindled to 102, and only 38 of these were in the college department.[1] The president in his annual report asked if it were "wise for Ohio to neglect her university, the oldest in the whole family of State universities. Can she afford to sit with folded hands while her sister States on every hand are passing forward with such rapid and determined strides?"[2] He adds that "for the purpose of producing men of influence and maintaining a position of eminence among the States, one great institution, distinguished by learning, by intellectual power and by the highest order of intellectual training, is of more value than a score that do not rise above the common level."[2]

In 1883 the Governor asked that all the State universities

[1] *Executive Documents*, 1881, p. 1415. [2] *Ibid.*

be brought under the management of one Board of Trustees, and reiterated this suggestion the following year. The alumni of the two older universities objected to the plan, fearing the identity of their schools might be destroyed. In 1890 the Governor's message called attention to the fact that Ohio stood twenty-sixth on the list of States in the encouragement of higher education, and advised that a tax of a fraction of a mill be levied on the grand duplicate for university purposes. A levy of one-twentieth of a mill was made for the Ohio State University, the older institutions being omitted.

The third university to be called into being by State action was the Ohio State University. It was organized in 1870 as "The Ohio Agricultural and Mechanical College," and was based on the act of Congress of July 2, 1862, granting 30,000 acres of public land for each Senator and Representative to which the State was entitled by the census of 1860. The proceeds from the sale of this land, together with accumulated interest, amounted to over half a million dollars, and forms a perpetual endowment. In 1878 the school was reorganized under its present name, "The Ohio State University." It is located in Columbus, and from the beginning has been more prosperous than the older institutions. The first State appropriation was made in 1878, and since 1890 a permanent levy has been made. This is at present one-tenth of a mill.[1] In 1901 the total income of the university was $337,401.45; of this amount $182,704.23 was from the State tax. There were 1,465 students, a gain of 413 over the previous year. All except 482 of these were in the professional schools, and 94 per cent. came from Ohio, while 27.5 per cent. came from Franklin county, in which the university is situated. These figures indicate that the school

[1] 92 *O. L.*, p. 59.

is peculiarly a State institution, and that a proper application of State aid insures a ready response from the citizens.

In 1896 a State levy of one-thirtieth of a mill was made in favor of the two older universities, seven-twelfths of this amount to go to Ohio University and five-twelfths to Miami.

In 1887 [1] the State established a normal and industrial department in Wilberforce University, a school for colored pupils. Five trustees are appointed by the Governor and four by the trustees of the university, including the president of the university. An annual State levy is now granted these departments.

In 1902 the State established a normal department at Miami and Ohio Universities, to be under control of the trustees of the respective schools, and offer instruction coordinate with existing courses.[2] A levy of one-thirtieth of a mill was made for the support of these departments, to be divided as the general levy for the universities, seven-twelfths for Ohio University and five-twelfths for Miami.

The same act enabled the Governor to appoint a State Normal School Commission of four, two from each of the leading political parties, to investigate the need and advisability of establishing one or more normal schools, and to determine how State aid can make more efficient, in normal work, existing schools not supported by the State. The last clause was instigated by the clamor of numerous private colleges against the increasing efficiency of the established State universities.

Thus Ohio has a discrete system of higher education under State tutelage. It is not the function of this paper to inquire what influences have tended to perpetuate this segregation of forces. Denominational, political and sectional interests have all aided in the decentralization. The facts have been presented in such detail in order to emphasize the belief that had

[1] 84 *O. L.*, p. 127.

[2] 95 *O. L.*, p. 45.

a firm centralizing policy been maintained from the beginning the State might to-day possess a system of higher education commensurate with that of other States, created from the Northwest Territory, and whose history has been in other respects similar to that of Ohio. The establishment of normal schools at the older State universities, and the overshadowing influence of the university at Columbus, together with the provision of the law cited on page 60, favoring high school graduates in admission to the State universities, portend a centralization that has been strangely delayed. It seems probable that the energies of the State will be centered in the youngest of the universities; that the two older will be consolidated into a Normal College, and the high schools of the State be made feeders for these institutions.

PRIVATE COLLEGES

The policy of the State has been powerfully influenced by the privately endowed colleges. Of these there are thirty-seven, betokening a scattering of educational energy that has made Ohio the home of the small college. While size is by no means a measure of efficiency, yet proper equipment and financial well-being are essential to a modern college. What consolidation may be needed among the denominational colleges of Ohio can be seen from the following statistics, taken from the report of the State School Commissioner for 1902:[1]

The total attendance for that year was 7,147. Only two colleges had over five hundred students in the college department, nineteen had less than one hundred, five had less than fifty, and the smallest of the small colleges had fifteen students.

The equipment of some of these colleges is inferior to that of many of the better high schools. One-fourth of them

[1] The totals include the three State Universities.

have less than 5,000 volumes in their libraries, one-half have less than 10,000, and only three have more than 50,000, while one reports a college library of 70 volumes. Six of these private colleges have property aggregating more than $1,000,000 each. The yearly income of six is over $50,000. Only three have an income of over $100,000. The Ohio State University has the largest income, $300,000 a year. Twelve have incomes of less than $10,000 a year, and one struggles somehow through the year on $900.

There has been practically no supervision in the granting of college charters. Numerous plans have been laid before the Legislature for such supervision. The earliest was made in 1837 by Caleb Atwater, the chairman of the first committee that drafted an educational bill for Ohio. He thought there should be a Board of Education which should have the superintendence of all the colleges, academies and common schools of the State.[1] The College Association of the State has made several attempts to bring the question to the attention of the Legislature, but without success. Uniform requirements for admission to the colleges that are members of the association have been formulated, but they are not obligatory, and not all of the colleges are members of the association.

Recently the Supreme Court has decided that "when the trustees of an educational institution, incorporated under the laws of the State, sign diplomas in blank and leave them in control of one of its officers, who sells them, and thus confers degrees without regard to merit, there is such a misuse of the power conferred as requires the dissolution of the corporation."[2] The occasion for the decision was the flagrant violation indicated, by one of the obscure colleges. While but very few of the institutions might be reached in

[1] Atwater, *History of Ohio*, p. 285.

[2] Ohio *ex rel* Att'y Gen. *vs.* Mt. Hope College, 63 *O. S.*, p, 341.

this drastic manner, it does appear reasonable that some State control should be exercised to make a college diploma indicative of merit.

The facts detailed in this chapter may be thus summarized: Lack of centralization is evidenced: 1, by the want of uniformity in district organization, in the curricula, in the qualification of teachers; 2, in the establishment of three State universities; 3, in the want of local and State superintendence.

Centralization is evidenced: 1, in the classifying of the districts, in the creation of the township unit, the consolidation of the township schools.

2. In the classifying of high schools, the "Boxwell" law providing uniform examinations for high school entrance, in the power of State Commissioners to determine what is a high school.

3. In the establishing of State normal schools and the supervision of county institutes by the State Commissioner.

4. In the increased levy for the Ohio State University.

5. In the gradually increasing authority of the State Commissioner, the centralizing of township schools, the option of the township board to elect a township principal.

It is important to note that private initiative has taken the place of State initiative, in the establishing of voluntary State supervision by the State Teachers' Association, and in the power of the county Board of Examiners over the qualification of teachers and the courses of study in the counties.

In a recent report of the State Commissioner the situation was thus stated: "The Ohio school system as a State organization is radically defective. It lacks effective centralized power and authority. It is home rule carried to excess. What our school system most needs is reorganization on a definite and comprehensive plan." [1]

[1] *46th Report of Commissioner of Schools*, p. 14.

The following tables set forth the development of the common school system of the State. The returns in the earlier years were quite incomplete.

The enumeration of school children included, up to 1853, all between the ages of four and twenty-one; from 1853 to 1873 all between the ages of five and twenty-one; since that time the school age has been from six to twenty-one.

The history of the school system may be divided into the following periods:

1. According to State superintendence.
    a. 1837-40. State Superintendent.
    b. 1840-53. Secretary of State acted as Superintendent of Schools.
    c. 1853-present. Commissioner of Common Schools.
2. According to State taxation.
    a. Until 1839, no State tax.
    b. 1839-53. Common school fund of $200,000.
    c. 1853-present. State tax rate fixed by legislation annually.
3. According to local taxation.
    a. Until 1851, no regular system of local school taxation. Money was raised by tuition and returns from the school lands. During the latter part of the period assessments were allowed for building purposes and maintaining high schools.
    b. 1851-present. Local taxation, limits fixed by statute.
4. According to compulsory attendance.
    a. Until 1877, no compulsory law.
    b. 1877-1889, first compulsory school law.
    c. 1889-1893, second compulsory school law.
    d. 1893-present, third compulsory school law.

All of these periods are clearly indicated in the tables. The effect of each step in school legislation is apparent.

TABLE SHOWING THE DEVELOPMENT OF THE PUBLIC SCHOOL SYSTEM FROM ITS INCEPTION IN 1837 TO 1865

YEAR.	Total Number of Schools.	Number of Counties Reporting.	Average Weeks in Session.	Number of School Houses Built.	Enumeration.	Enrollment.	Daily Attendance.	Total State Tax.	Local Tax.[1]
1837	4,336	62	20.44	4,378	468,812	146,440			
1838.....	4,030	54	16.64	393	588,590	109,207	73,305		
1839.....	7,295	65	16.	731	.....	254,612	.....	$200,000 00	
1840.....	.....	14	.....	.....	618,746	.....	.....	200,000 00	
1841.....	3,181	45	13.32	123	.....	137,870	51,514	200,000 00	
1842.....	3,627	53	13.48	153	.....	9,511	61,430	200,000 00	
1843.....	4,284	45	12.48	125	.....	44,742	74,807	151,837 42	
1844.....	3,320	45	13.4	115	.....	48,870	56,517	200,000 00	
1845.....	5,385	52	12.64	145	712,152	19,314	84,476	200,000 00	
1846.....	4,332	55	14.16	164	728,638	34,863	78,750	200,000 00	
1847.....	4,882	56	22.24	175	754,193	62,858	78,863	200,001 00	
1848.....	5,062	57	12.44	153	.....	94,620	90,656	200,614 54	
1849.....	11,075	80	14.56	158	796,109	367,608	318,556	199,804 60	
1850.....	12,279	79	14.04	248	810,163	421,733	337,875	200,000 00	
1851.....	12,664	81	17.72	300	828,583	445,497	263,247	200,000 00	$102,837 35
1852.....	9,916	70	10.4	171	838,669	437,712	266,267	200,000 00	109,474 92
1853.....	5,894	70	.....	.....	811,957	.....	.....	1,186,793 69	115,015 26
1854.....	10,572	77	23.92	770	816,408	358,417	277,156	1,118,089 02	404,878 81
1855.....	12,246	81	22.5	740	820,624	551,939	375,851	1,046,284 10	351,210 93
1856.....	11,319	85	24.6	627	810,166	561,315	322,643	1,113,918 85	441,234 52
1857.....	12,339	87	24.6	570	838,037	603,247	356,867	1,070,767 72	530,353 19
1858.....	12,602	.....	25.4	589	843,227	611,720	352,145	1,212,855 52	889,268 81
1859.....	11,673	87	25.2	475	865,914	600,084	350,369	1,125,574 07	1,335,751 82
1860.....	13,584	88	24.8	446	892,854	685,117	405,952	1,224,155 39	1,439,539 99

[1] Until 1851, local taxation was authorized only for building purposes. The income was in form of tuition and interest on local land funds, and rentals from local school lands.

TABLE SHOWING THE DEVELOPMENT OF THE PUBLIC SCHOOLS FROM 1865–1901

YEAR.	Enumeration.	Enrollment.	Daily Attendance.	Per cent. of Attendance on Enumeration.	Per cent. of Attendance on Enrollment.	Total State Tax.	Total Local Tax.
1865.....	944,852	702,552	391,945	41	56	$1,325,013	$1,634,667
1870.....	1,041,680	724,896	446,147	43	62	1,452,445	4,889,880
1875.....	1,017,726	712,129	435,249	44	61	1,560,397	6,153,442
1880.....	1,046,225	747,138	476,279	46	65	1,558,207	5,155,878
1885.....	1,095,465	774,660	517,569	48	67	1,630,768	7,213,254
1890.....	1,123,895	797,439	549.269	48.8	69.5	1,738,745	8,168,839
1895.....	1,159,258	817,490	592,465	51.1	72.5	1,740,227	9,682,324
1900.....	1,226,366	829,160	616,365	50.2	75.25	1,765,420	10,830,111
1901.....	1,219,919	829,857	610,622	50.0	76.25	1,783,258	11,351,586

CHAPTER II

TAXATION AND LOCAL FINANCE

THE general property tax has been from the first the foundation of the State's income. The history of taxation in Ohio is largely the story of the gradual disintegration of this tax. This disintegration is due to the inability of the system to reach personal property, which has grown to form the vast bulk of the wealth of the State, and to the recognition of the principle that not all methods of taxation are alike effective for State and local purposes, but that the State and the municipality properly form separate tax areas, and certain taxes are peculiarly adapted to each. Centralization in tax administration has progressed *pari passu* with the incorporation of this principle into law.

The development of this movement toward centralization will properly include (1) a discussion of the general property tax, which reveals three distinct periods of growth; (2) the equalization of assessments, and (3) the special tax laws devised in more recent years. The central control of local finances is confined mainly to the operation of the independent treasury act and the uniform auditing system.

THE GENERAL PROPERTY TAX

The first period. The earliest tax laws of the State were adopted from the territorial laws, which were in turn a transcript from the Kentucky Code.[1] There was no provision for a general valuation. All lands were divided by law into three grades; these were taxed arbitrarily at rates vary-

[1] *Territorial Laws*, 1792, p. 16.

ing from twenty to sixty cents, and latterly from seventy-five to one hundred and fifty cents on each one hundred acres. The assessments were fixed annually by the General Assembly. All the moneys derived from the tax on land were paid into the State treasury.

At first the Court of Common Pleas appointed assessors and collectors in each county. Later this court appointed a Board of County Commissioners, who appointed collectors and had final jurisdiction in equalizing assessments. The county treasurer was appointed by the Governor of the territory, and reported semi-annually to the county commissioners.[1]

When Ohio became a State the county was made a more important unit of taxation. The commissioners were elected for three years. They appointed one lister to list all the lands in the county, and make yearly returns to the State auditor.[2] They, at their discretion, appointed one county collector, or permitted each township to elect a collector.[3] All moneys were paid by the collector to the commissioners. They retained their capacity as a Board of Equalizers. For collecting taxes belonging to non-residents the State was divided into six districts, the General Assembly electing one collector for each district annually.[4]

Taxes for local purposes were levied on town lots and buildings according to appraised value; and on a few animals, specified by law, valued at definite rates per head, without appraisement; and by license taxes on business. The county commissioners fixed the amount of the license tax, the law merely prescribing the maximum and minimum rates. Peddlers' licenses were issued by the county clerk, and in 1822 the entire license tax was taken from the commissioners and placed in the hands of the Common Pleas

[1] *Territorial Laws*, 1796, p. 107. [2] 8 *O. L.*, c. 75.

[3] 4 *O. L.*, p. 35. [4] 8 *O. L.*, c. 75.

Court.[1] Township taxes were levied by the township trustees and collected by township collectors. If the local taxes did not suffice, the Legislature annually disbursed the State moneys among the counties.

During this period the powers of the State auditor over local tax administration gradually increased. All duplicates and lists were reported to him by the county officials. As early as 1809 the State auditor recommended that all the listing of lands be centralized in that office.[2] It was the rule that land should be listed by the owners. But no provisions had been made for recording transfers, and so it came about that many lands were transferred and never listed. More frequently the land remained charged to the former owner, and was listed as delinquent by the county listers. This naturally wrought confusion. To correct any such errors in the listing of property it was necessary to journey to the State capital; the law of 1820 remedied this. Frequently taxes were collected from former owners after transfer had been made, and this necessitated the refunding of large sums that had been unjustly collected. There was no uniformity in the listing of property among the several counties, nor in the classifying of land, nor in the making of returns. To remedy these defects the State auditor was empowered to refund moneys improperly paid for taxes, to enter lands upon the lists not returned by the proprietors, to prosecute delinquent collectors, to make abstracts of public lands as they became subject to taxation for the first time, and to correct all duplicates.[3] He was later made the sole judge as to errors made in levies on land, and empowered to correct the same,[4] and supervised the making of county duplicates.[5] He had the supervision of the district collectors, preparing their duplicates and receiv-

[1] 20 *O. L.*, p. 40. [2] *Senate Journal*, 1809, p. 16, [3] 8 *O. L.*, c. 75.
[4] 10 *O. L.*, c. 5. [5] 15 *O. L.*, c. 60.

ing their annual reports,[1] prosecuting delinquent district collectors, as well as delinquent taxpayers, and acting as a district equalizer.[2]

The plan of dividing the land into three classes, and taxing each class at a fixed rate, proved as unsatisfactory as it was arbitrary. The gathering of all the moneys into the State treasury and redisbursing them to the various counties proved clumsy, even in the early days when population was sparse and business not complex. The relative amount of first and second class land returned gradually diminished, for property owners classified their land as low as possible. As there was no State Board of Equalization, and no means were at hand for co-ordinating the values of different counties, great hardship and injustice resulted. In 1824, *e. g.*, the State taxes levied on Hamilton county, in which Cincinnati is located, and which was then the only town of any size in the State, were $2,080, while Athens county, a purely agricultural community, paid $2,142 on land of the same description. Thus even a general tax on land was not equitably levied.

The following table shows the diminution in the relative amount of first and second class land returned, and the rate of taxation and total taxes collected. It is seen that first class land, located mostly in the towns, and the most fertile farming regions, paid the least amount of the entire moneys collected.

Years.	Total Number of Acres.	First Quality of Land.	Second Quality of Land.	Third Quality of Land.	Rate of taxation per 100 acres.			Total Taxes.
					First Quality.	Second Quality.	Third Quality.	
1805.....	7,252,856	.....	.....	.....	$0 90	$0 65	$0 40	$43,512 95
1808.....	10,479,029	147,093	5,280,131	5,025,183	1 00	75	50	67,501 60
1810.....	9,933,099	129,741	4,177,950	5,625,408	1 25	1 00	65	85,964 39
1815.....	11,090,214	174,819	4,856,997	6,058,398	3 60	2 68⅓	1 78	259,486 19
1820.....	13,319,043	255,084	7,304,633	5,759,323	1 50	1 00	50	205,346 95
1825.....	13,025,073	178,998	5,672,277	7,173,798	1 50	1 12½	75	200,405 25

[1] 8 *O. L.*, c. 75.

[2] 14 *O. L.*, p. 79.

The fixed assessments upon various classes of personal property proved quite as arbitrary as the tax on land. All carriages and all horses, mules and certain cattle were taxed alike, regardless of their real value. Petitions poured into the Legislature from all parts of the State praying for the enactment of more just measures.

The second period was inaugurated in 1825. Real property remained the basis of the tax. Provision was made for its valuation at "its true value in money." Little attempt was made to reach personal property. Merchants and brokers were arranged into eight classes by the Common Pleas judges, according to the amount of capital invested, and a definite sum was assessed upon each class. This amounted practically to a license. The assessments upon animals subject to taxation were still fixed by the General Assembly without appraisement. The list of exempted property was very large, including not only realty used for educational and religious purposes, but until 1831 also mills and factories.

The county officials whose duty it was to administer these laws were:

1. The county auditor. This office was created in 1821, the auditor being elected for a term of three years.[1] He has become the principal local administrative officer in the tax system. Many of the functions formerly exercised by the county commissioners were immediately assumed by him. He prepared the county lists of lands and corrected the township lists. He settled accounts with the collectors, proceeding against any delinquents; prosecuted all delinquent taxpayers, sold land for delinquent taxes and made deeds for the same, reporting all such sales to the State auditor; he apportioned the taxes among the townships of his county;[2] he sold the school lands, when the inhabitants

[1] 19 *O. L.*, c. 62. [2] 23 *O. L.*, p, 58.

of a county so directed; collected the taxes from non-residents, formerly collected by the district collectors,[1] and prosecuted all violations of the license laws.[2]

2. The county treasurer, who in 1827 assumed the work of collector.[3] He reported to the State auditor through the county auditor.

3. The Court of Common Pleas, that at first made the list of merchants and brokers,[4] this duty devolving afterwards upon the assessor, and that continued to grant all licenses to ferryboat owners, tavern keepers, auctioneers, peddlers, physicians and lawyers.[5]

4. The county assessor, first elected in 1827,[6] with the power to appoint township assessors, listed and assessed all taxable property.

5. The county commissioners had now been completely deprived of tax administration, excepting as they formed, together with the county auditor and assessor, a county Board of Equalization.[7] This subject will be developed in a later section.

The township tax remained under the charge of the township trustees.

The administrative functions of the State auditor were also extended. In addition to his former duties he had complete supervision of realty owned by non-residents.[8] He became supervisor of insurance companies in 1830,[9] and of the State common school fund, derived from the sale of school lands.[10] All taxes paid into the State treasury were listed by him, and he furnished every county auditor and treasurer with a copy of such lists. This gradual enlargement of the powers of the State auditor was due to the com-

[1] 27 *O. L.*, p. 32.
[2] 23 *O. L.*, p. 58.
[3] 23 *O. L.*, p. 58.
[4] 28 *O. L.*, p. 43.
[5] 29 *O. L.*, p. 310.
[6] 29 *O. L.*, p. 310.
[7] 24 *O. L.*, p. 19.
[8] 25 *O. L.*, p. 73.
[9] 25 *O. L.*, p. 21.
[10] 24 *O. L.*, p. 59.

pulsion of conditions. This was fully recognized by the State officers. In 1820 the auditor asked that all local tax officials be required to report in detail to him, thus ensuring in the tax administration "harmony, responsibility and regularity." [1] The reason for this request was the rapid growth of local taxation and the lack of provisions "for the concentration of information relative to the sums collected and expended for county and township purposes."

Congress had granted 3 per cent. of the proceeds of the sale of public lands to the State for improving roads. This was usually distributed with manifest lack of system among the various counties. The road commissioners were an irresponsible board, and the Governor in his message of 1819 complained that this money was practically wasted,[2] and recommended that a centralized control be exercised over it. The auditor the following year reiterated this suggestion, adding that the State auditor could most efficiently act as such official. This was never done, and the moneys appropriated by the Legislature for improvement of roads, as well as the "three per cent. fund," remained in irresponsible hands.

In 1839 an exhaustive report on the financial system of the State was made to the Legislature by the auditor. "It is an unfortunate feature of our whole financial system," recites this report, "that upon no one department is devolved either the ability or the duty of presenting in one document the whole character and condition of our financial affairs," and this lack of unity in the reports merely reflected the lack of centralized control in the respective officers. It was suggested that the State auditor be made the administrative head of the financial department. Half a century elapsed before this was done. Indeed at this period a new financial authority was created, "The Sinking Fund Commission," to

[1] *Senate Journal*, 1820, p. 12.

[2] *Senate Journal*, 1819, p. 12.

take care of an enormous debt that had been contracted for the purpose of building canals and turnpikes. This commission has existed from its initiation as an entirely independent board, reporting only to the Legislature. In 1851, however, the State auditor was made *ex officio* a member thereof.

The act of 1825 sought to equalize the tax upon land values. It did not attempt to reach personal property. But as the State developed and towns multiplied the amount of personal property rapidly increased, land ceased to be the principal kind of property, and could not therefore remain the basis of an equitable tax system.

The third period was accordingly inaugurated in 1846.[1] "All property, real and personal, money and credits," was made subject to taxation. Stringent methods for the listing and appraising of personal property were adopted. As this law was practically embodied in the Constitution of 1851, and is even now in force, I will state its provisions in the amended forms, as they are enforced at the present time.

Real property is appraised once in every ten years [2] by appraisers elected in each ward and township. The State rate is fixed by the Legislature and the local rate by the county commissioners, township trustees and city council.

Personal property is returned annually. Every citizen over twenty-one years of age is furnished with an elaborate blank, upon which he must list all personal property owned by him and its value. This report is made under oath and handed to the assessor. If any person refuses or neglects to make the required returns the assessor makes the returns

[1] 44 *O. L.*, p. 85. The principal revision of the law was made in 1878. 75 *O. L.*, p. 436.

[2] From 1826 to 1846 the legislature authorized general appraisements by special act. Six such appraisements were made in that time. From 1846 to 1860, appraisements were made every seven years; since 1860, every ten years.

from such information as he may be able to obtain, or from his own personal knowledge. All corporations, except express, telegraph, telephone and railroad companies, are required to make return of all their personal property to the auditor of the county in which their business is located. The taxes are collected by the county treasurer.

The county auditor has general supervision of county taxes and their collection. He has the power to revise the lists, and to compel attendance before him of any one suspected of fraud or delinquency, and upon being convinced of a willingness to omit property for returns he may add as a penalty 50 per cent. of the total sum of the property found. If he thinks personalty undervalued, he has limited equalizing power, appeal being allowed from his decision to the county Board of Equalization. He supervises the listing of all property and compiles the "grand duplicate" for these returns. He has supervision over the local assessors, and it is now customary for these to secure their formal instructions from him, provision being made for this procedure by law. He can inquire into the manner the assessors are prosecuting their work, and they report to him weekly. He has power to add realty to the duplicates in the interim of the decennial appraisements, and to have the same appraised. All sales for delinquent taxes remain under his supervision.

Since 1859[1] all bankers, brokers and railroads are compelled to report annually to the county auditor. In the case of railroads the county auditors of the counties through which the line passes constitute a Board of Appraisers for the railroad property. They are not required to report their proceedings as such a board to any higher authority, and have full power of inquiry, including the usual right to subpœna witnesses, administer oaths and take depositions. An appeal from their decision now lies to the State Board of

[1] 56 *O. L.*, p. 175.

Appraisers and Assessors. These provisions were extended to express and telegraph companies in 1878,[1] the auditor, in case of the latter companies, having the sole power to correct returns, appeal being allowed to the county Board of Equalization. The auditor, however, is a member of the board.

These administrative powers have been augmented by the special tax laws passed in recent years; these will be enumerated later. Besides these general supervisory duties over tax administration, the county auditor was given important powers over the county treasury by the independent treasury act of 1858.[2] No money could be drawn from the county treasury, except for State purposes, without the written order of the county auditor, and, together with the county commissioners, he examined the treasury quarterly. This provision was altered in 1869, lessening the restriction concerning the drawing of money from the treasury and authorizing examinations semi-annually.[3]

Thus the county auditor has gradually evolved into an important administrative officer in the execution of the general tax laws. The other officers entrusted with tax duties are subordinate to him, the assessors being directly under his control, and the treasurer subject to his examining power. The Board of County Commissioners, so important as tax administrators in the first period, have now no other tax power than that of fixing the county levy and sitting as a Board of Equalization.

Centralization is as evident in the increased powers of the State auditor. He receives all returns from the county auditors, and his directing authority over them not only includes the transmission of forms for their reports, but he can revise their returns and order a re-valuation, or an examination into any details he may see fit to question. He

[1] 75 *O. L.*, p. 436. [2] 55 *O. L.*, p. 44. [3] 71 *O. L.*, p. 137.

prepares the State duplicates and transmits instructions to county auditors for the decennial appraisement of realty. He apportions the State taxes amongst the various counties and notifies the county auditors of their counties' share. He is a member of the State Board of Equalization, and his instructions and advice, though not obligatory upon the board, are usually very influential in determining their decisions.

Ohio has had the usual experience with the general property tax. The law utterly fails to reach personal property. Though all the processes known to the courts are open to the tax officials, yet they are not adequate to compel a man to be honest in listing his personal property. The law is constantly evaded. It seems to be expected of a man of large possessions that he submit only a small portion of his wealth to taxation. The tax commission of 1893 found that "intangible property pays but 9.4 per cent. of the taxes of the State," and that "tangible property is grossly undervalued." [1]

The fault, however, lies not entirely in inefficient administration. It is simply impossible to reach intangible property for purposes of taxation by means of a general tax. The details of the Ohio laws are on the whole probably as well administered as are the laws in other States. The fallacy lies in the theory underlying the law, that citizens will actively co-operate with the State in the enforcement of tax measures.

In order to meet these weaknesses the State has practically separated the two kinds of property for tax purposes. To reach intangible property new laws have been enacted.[2] To cure its inequality the realty tax has virtually been

[1] *Report of the Tax Commissioner of Ohio*, pp. 69, 70.

[2] *Vide infra.*

assigned to county and municipal purposes. The inequality in this tax has been in large measure due to the failure of the present system of equalization. Appraisements taken at intervals of ten years cannot register the gradual shifting in values, because land values change a great deal in a decade, especially in cities. Again, the greater the interval between appraisements, the more difficult the task of equalization. And no realty tax, even if confined to a small area, can be equitable if efficient equalization is not provided. In Ohio equalization is inefficient. The boards of equalization provided are too clumsy, the tax area too large, and the interval between appraisements too great.

The following table shows the growth of the general property tax. It is evident that the growth in population, especially urban population, has been much more rapid than the increase in the assessed value of taxable property reveals. The value of personalty has never been even one-half that of the realty. The appraisements in the more recent years have not augmented the totals as much as those of the earlier period.

YEARS.	Value of Realty.	Value of Personalty.	Total Value of Taxable Property.	State Tax.	Total Tax, Including all Local.	Population of State.	Urban Population.
*1826.....	$15,964,840	$11,035,820	$57,982,640	$105,816 00	$392,783 00	800,000[1]	10,000[2]
1834.....	57,399,577	23,500,073	81,100,660	172,434 00	703,104 00	1,000,000[1]	30,000[1]
*1835.....	75,760,797	21,188,408	96,949,205	147,854 00	805,050 00		
1840.....	85,287,291	27,038,895	112,326,156	564,435 00	1,755,539 00	1,519,467	46,338
*1841.....	100,851,837	27,501,820	128,353,657	642,153 00	1,890,405 00		
1846..... ...	109,940,636	40,352,496	159,293,132	1,214,897 00	2,589,073 00	1,700,000[1]	90,000[1]
*1847.....	306,798,730	83,964,430	416,763,100	1,331,398 00	2,847,673 00		
1853.....	363,490,901	229,905,947	593,396,848	3,026,324 00	8,823,805 00	2,000,000[1]	190,000[1]
*1854.....	569,868,410	297,061,572	866,929,982	3,027.601 00	9,092,239 00		
1860.....	639,894,311	248,408,290	888,302,601	3,503,713 00	10,817,676 00	2,339,511	293,127
*1861.....	634,883,552	248,966,532	892,850,084	4,056,379 00	11,656,814 00		
1870.....	807,846,636	459,684,861	1,167,731,697	4,666,242 00	23,463,631 00	2,665,260	517,909
*1871.....	1,025,619,034	476,510,937	1,502,129,971	4,350,728 00	22,955,388 00		
1880.....	1,102,049,931	456,166,134	1,558,215,965	4,513,240 00	29,092,048 00	3,198,062	745,894
*1881.....	1,101,457,383	485,750,196	1,587,207,579	4,598,057 00	27,606,380 00		
1890.....	1,232,305,312	543,833,165	1,778,138,477	4,798,635 64	37,636,940 58	3,672,329	1,159,342
*1891.....	1,151,038,931	556,164,445	1,707,203,376	4,181,143 19	35,861,610 33		
1900.....	1,274,203,721	559,849,507	1,834,053,228	5,316,623 01	45,608,126 85	4,157,545	1,599,820
*1901.	1,377,253,183	591,026,817	1,968,280,000	5,686,248 93	47,980,509 16		

* The years of general appraisment. Figures for the oth years are given to show the amount added by the appraisement.

[1] Estimated.

[2] Until 1840, Cincinnati was the only city in the State wit more than 8,000 inhabitants.

EQUALIZATION

There are three sets of equalization boards, corresponding to the three most important administrative units, the State, the county and the city.

The State boards comprise the decennial board, composed of one member elected from each senatorial district and the State auditor, and the annual State board for equalizing bank and railroad property, composed of the State auditor, State treasurer and Attorney-General. The county boards are; the annual board, composed of the county commissioners and the auditor, and the decennial board, the same as the annual board, including the county surveyor. The city boards are also annual and decennial. Their organization depends upon the size of the city. Usually they comprise the county auditor and six members elected by the council.

There is no degree of centralization apparent in the history of these boards, excepting that now local boards are considered "mere supervising assessors of property," [1] subject to the reviewing power of the State board.

The system of equalizing assessments has proved quite as unsatisfactory as has the general property tax. The State board is bulky; it meets only once in ten years, and values change appreciably in that period, especially in cities. Political log-rolling always is manifest, and rarely has there been a general increase in the total appraised value; in recent years none. The board seems to devote its time to the reduction of assessed values rather than to their equalization. The most serious defect, however, is the lack of powers. Usually these are defined by specific legislation, although the board is created by the general tax law. Parcels of realty have never been equalized. Either an entire county or municipality must be taken as a unit, and the

[1] *Journal State Board of Equalization*, 1880, p. 158.

board can raise or lower the aggregate in such unit by adding or deducting such per cent. as they think equitable. They may lower or raise the aggregate returns of the State after the individual counties have been equalized. This usually entails the only severe struggle. The law fixes the maximum per cent. of such aggregate additions or deductions. In 1870 it was only one per cent., and the board memorialized the Legislature to increase this, because they thought that the 81 per cent. increase in State valuations during the preceding decade represented a greatly inflated value, and that the aggregate returns should be considerably lessened to equalize the values between counties that had not returned excessive valuations and those that had.[1] The Legislature extended the limit to 12½ per cent., where it has remained.

The State auditor furnishes the board with maps, statistics and any other information desired. The board has several times asked for an extension of powers, and the Governors have at various times shown the inadequacy of the board because of its unwieldy size[2] and of its limited powers.

An important step toward centralization in city equalization was taken by the last Legislature in providing a board of review for equalizing real and personal property. Whenever a county auditor makes application for such a board for any municipal corporation in his county, the State board of appraisers and assessors for railroads and banks are to appoint three citizens, freeholders of the city, and not more than two of the same political party, to act as a board of equalization for that municipality. The appointment is for five years, and a salary, not to exceed two hundred and fifty

[1] *Journal State Board of Equalization*, pp. 26–7.

[2] There are thirty-eight senatorial districts in the State. *Vide* also *Governor's Message*, 1900.

dollars a month, is determined upon by the county commissioners, and though this is a city board, their pay is drawn from the county treasury. The county auditor is secretary of the board, and must be present at each meeting, receiving five dollars a day for this extra labor. This board of review takes the place and has the powers of the former annual and decennial city boards under any or all the laws now in force for municipalities. The board continues in session throughout the year, but the State Board of Assessors and Appraisers has the power to fix a time limit within which the work must be completed. The State board also may remove, at their discretion, any member from the local board.

TABLE ILLUSTRATING THE OPERATIONS OF STATE BOARD OF EQUALIZATION IN FRANKLIN COUNTY

Columbus is a city of about 125,000 inhabitants. None of the villages or towns grouped under "Town" column have more than 4,000 inhabitants. Most of them are small villages

YEAR.	Value Farm Lands.	Value Town Realty.	Columbus.	Farm Lands as Equalized.	Per cent. Added or Deducted.	Town Lands as Equalized.	Per cent. Added or Deducted.	Columbus as equalized.	Per cent. Added or Deducted.
1826.....	$1,433,335	$836,001[1]	.....	.....	+18	.....	+18		
1835.....	1,770,878	1,086,531[1]	.....	.....	+27	.....	+27		
1841.....	5,310,597	2,431,030[1]	.....	$5,682,338	+ 7	$2,601,202	+ 7		
1853.....	10,835,226	284,557	$6,934,117	11,051,931	+ 2	666,328	+57	$6,934,117	No change.
1859.....	12,291,386	936,697	4,527,284	12,783,043	+ 4	956,872	+ 4	5,794,924	+28
1870.....	21,336,816	1,366,147	15,887,683	17,837,579	—16.4	1,142,099	—16.4	13,981,161	—12
1880.....	15,823,556	987,545	24,714,167	16,361,557	+ 3.4	1,021,121	+ 3.4	22.292,179	— 9.8
1890.....	16,582,230	1,431,261	43,110,810	13,431,666	—19	1,196,136	—16.5	42,679.701	— 1
1900.....	15,738,542	961,828	54,431,623	14,636,844	— 7	884,828	— 7.9	51,710,041	— 5

[1] Including Columbus.

TABLE SHOWING THE WORKING OF THE STATE BOARDS OF EQUALIZATION FOR REAL PROPERTY[1]

There has been an almost uniform reduction in the values as equalized

YEAR.	Acres of Farm Land.	Aggregate Value as Returned.	Aggregate Value as Equalized.	Increase or Decrease.	Returned Aggregate Value of Town and City Realty.	Equalized Aggregate Value of Town and City Realty.	Increase or Decrease.	Total Aggregate Additions in Counties.	Total Aggregate Deductions in Counties.
1826..	15,143,309	$37,474,495	$37,714,225	+ $239,730	$7,305,773	$7,321,034	+$15,261	$2,264,043	$2,008,279
1835..	17,028,855	48,553,751	.....	.....	14,998,611	.....	.....	8,331,861	1,447,932
1841..	20,215,044	77,710,762	.....	.....	17,920,154				
1846..	23,436,062	260,450,289	259,093,635	— 1,366,654	66,945,911	65,302,373	— 1,643,538	10,136,395	13,131,559
1853..	24,750,453	427,018,435	421,633,047	— 5,385,388	139,936,999	137,092,495	— 1,844,504	16,240,183	24,520,075
1859..	25,316,264	493,123,441	486,068,529	— 7,054.912	148,460,012	147,147,128	— 1,312,794	14,230,267	22,597,973
1870..	25,312,937	762,950,024	684,338,058	—78,611,966	383,156,944	329,106,448	—54,050,496	2,713,245	135,375,707
1880..	25,366,103	725,312,776	684,826,516	—40,486,260	437,908,661	412,683,314	—25,225,347		
1890..	25,328,095	668,094,773	569,361,909	—98,732,864	598,734,082	570,773,587	—27,960,495	12,060,712	139,354,071
1900..	25,258,955	614,931,292	607,424,589	— 7,506,702	757,631,276	765,153,361	+ 7,522,085	30,206,035	30,190,652

[1]Compiled from "*Journals*" *of the State Board of Equalization.*

SPECIAL TAX LAWS

The Liquor Tax. The gathering of revenue has become a secondary object in the liquor license. The primary object is to restrict the traffic. This differentiates the liquor tax from the other sources of revenue enumerated under this division. Previous to 1818 the county commissioners granted tavern licenses. In that year the Court of Common Pleas was given the power.[1] The tax was collected with the other county taxes, and was devoted to local needs. A local option law, passed in 1847, and meant to apply to only ten named counties of the State, was repealed the following year,[2] and the liquor tax was placed under the control of the Probate Judge until 1883,[3] when a general license law was passed. The county auditor made a special duplicate for this tax, and he, together with the prosecuting attorney, was entrusted with the enforcement of the act. The license fee was two hundred dollars a year, distributed between the county and city funds. The law was amended in 1886, its provisions being made more stringent.[4] In 1888 the tax was raised to $250 a year,[5] and two-tenths per cent. of the tax was reserved for the State treasury. In 1896 it was again raised to $350 a year,[6] and a redistribution made, and in 1900 it was applied to buffet cars running in the State.[7]

Several local option laws have been passed in recent years; the most important one was enacted in 1897.[8]

The effort to tax personal property has resulted in the enactment of numerous laws that reach the individual indirectly, either through an assessment upon collateral inheritance or through the profits of corporations.

A final attempt was made, however, to secure adequate returns from individuals in the passage of the

[1] 16 *O. L.*, p. 44. [2] 45 *O. L.*, p. 39. [3] 80 *O. L.*, p. 164.
[4] 83 *O. L.*, p. 157. [5] 85 *O. L.*, p. 116. [6] 92 *O. L.*, p. 79.
[7] 95 *O. L.*, p. 564. [8] 95 *O. L.*, p. 87.

DELINQUENT TAX OR INQUISITOR LAW

This singular and stringent measure was enacted in 1888.[1] It had previously been in force as a local measure in Cincinnati [2] since 1880, and in Cuyahoga, Lucas and Franklin counties (containing the cities of Cleveland, Toledo and Columbus) since 1885.[3] The law empowers the county commissioners, county auditor and county treasurer, or a majority of them, "when they have reason to believe that there has not been a full return of property within the county for taxation, to employ any person to make inquiry and furnish the county auditor the facts as to any omission of property for taxation, and the evidence necessary to authorize him to subject to taxation any property improperly omitted from the tax duplicate." This officer is called the tax inquisitor, and his pay is not to exceed twenty per cent. of the amount he actually turns into the county treasury, except in the four counties named, where he may receive twenty-five per cent.

The inquisitor has the usual powers for examining witnesses, and acts as prosecutor in all cases of delinquency, placing the testimony before the auditor, who decides each case. If the delinquent refuses the inquisitor's summons, the auditor requests the Probate Judge to issue process, but even in such instances the auditor determines what sums shall be placed on the duplicate. The auditor is thus the final judge, and the efficiency of the law depends upon his rulings quite as much as upon the activity of the tax spy. A commission of five per cent. of all the moneys thus collected is paid to him. The Supreme Court of the State has ruled that the inquisitor can compel the auditor to act upon information furnished by him.[4] This is in reality the only

[1] 89 *O. L.*, p. 170. [2] 77 *O. L.*, p. 204. [3] 82 *O. L.*, p. 152.
[4] State *vs.* Crites, 48 *O. S.*, p. 142.

new function the law adds to the State tax system, as the act of 1861 authorized the auditor and assessors to compel testimony of all delinquents before a regular law court,[1] and it had been decided by the United States Supreme Court that under this act even the cashier of a bank may be summoned and compelled to testify and to bring his books to show the individual deposits in the bank.[2] Perhaps one reason why this power was not more frequently exercised by the auditor was because the office is elective, and the official would not seek to incur the displeasure of formidable constituents.

There is no greater degree of centralization in the inquisitor system than in the former methods of reaching delinquents. In practice the system has reached the dead level of mortgage hunting; unrecorded personalty is not found. The practical result is that a function that should be performed by the auditor is shifted upon an additional officer.

Under State supervision the measure might be more efficient. Local political influences would then be less potent. At present less than two per cent. of the tax on intangible personalty is derived from the inquisitor's efforts, a ridiculous sum considered in the light of the relative returns of personalty and realty.

THE COLLATERAL INHERITANCE TAX

This tax was inaugurated in 1903,[3] and makes all estates above the sum of $10,000 that do not descend to a direct heir liable to a tax of 3½ per cent. of their value. The Probate Judge appoints three appraisers, who report to him

[1] 58 *O. L.*, p. 47.

[2] First National Bank of Youngstown *vs.* Auditor Mahoning County, 106 *U. S.*, p. 523.

[3] 90 *O. L.*, p. 14.

the value of the property and the amount liable to the tax. The Probate Judge reports semi-annually to the county auditor the property within the jurisdiction of his court that has become subject to the tax. A direct inheritance tax, passed in 1898, was declared unconstitutional the following year.

These laws are primarily local in their administration and effect, the county auditor exercising considerable administrative authority in each case.

Beginning in 1889, a series of laws were enacted attempting to adjust tax methods to the fact that the vast body of property had become corporate. The basis of industry had shifted from the individual to the corporation, while the basis of taxation has remained the individual. These taxes were in the nature of fees, franchise taxes and excise taxes. In 1902 they were all gathered into two measures. They are administered by State officers.

THE EXCISE TAX [1]

This statute embraces in its operation the following corporations: electric light; gas, natural gas companies; pipe lines, water works; street, suburban or interurban railways; express, telegraph and telephone companies; messenger and signal companies; union depot companies; railroad companies. These are to report, under oath, annually to the State Auditor. The report is to set forth the nature of the company, the names and addresses of its officers, the principal officers in Ohio and their addresses; if express company, the gross receipts of each agent in Ohio, and of the entire company outside of the State; if a telephone or telegraph company, the gross receipts of each office in the State, and of the entire company; if a railroad wholly within the State, its gross earnings; if partly within the State, the gross

[1] 95 *O. L.*

earnings of the entire line, with total mileage and mileage in the State; if a street, suburban or interurban railway, the gross receipts, and if doing business outside of Ohio, the gross receipts and total mileage and mileage within the State; all other companies, the gross receipts of business done in Ohio; and such other facts as the auditor may require.

These returns are laid before the State Board of Appraisers and Assessors, composed of the State Auditor as chairman, State Treasurer, Attorney-General and Secretary of State.

This board can compel attendance of witnesses and examine them under oath, can order officers of any company to appear and bring the company's books, and may impose very heavy penalties, designated by law, upon all delinquents. The board reviews its own findings "as it may see fit." It determines the gross receipts of each company, upon which the auditor imposes a tax of one per cent.

THE FRANCHISE TAX [1]

Every corporation for profit organized under the laws of Ohio is compelled to report annually to the Secretary of State. The report is to set forth, among other things, the authorized capital stock and par value of each share, the amount of capital stock subscribed, issued and paid up. The Secretary of State is to collect a fee of one-tenth of one per cent. upon the "subscribed or issued or outstanding capital stock." The tax is not to be less than ten dollars in any case.

Every foreign corporation organized for profit, and doing business in the State, reports in addition the value of the property used in Ohio, and a similar tax is collected upon the proportion of the capital used in the State.

[1] 95 *O. L.*, p. 124.

Corporations not for profit are also required to report annually, but no tax is imposed.

Besides the above taxes many companies are required to pay annual fees.[1] These are applied to the maintenance of central bureaus of supervision, e. g., the office of Fire Marshal and the Superintendent of Insurance are maintained by insurance company fees.

The reason why these fees and the franchise tax are collected by the Secretary of State instead of the auditor is because all articles of incorporation are issued by him, and in his office is kept a list of all corporations in the State. He reports monthly to the auditor. The corporations have a right to be heard before the Secretary of State, and may appeal to the auditor, Attorney-General and Treasurer, who act as a sort of equalizing board.

All corporations that pay an excise tax are exempt from this act, as are all that are required to fill out special reports. These latter are insurance companies, building and loan associations, fraternal insurance companies and banks.

Insurance companies and fraternal insurance orders are subject to the scrutiny of a State Insurance Commissioner, and pay heavy fees for the support of that department. Building and loan associations are likewise controlled from a central office, and pay an excise tax upon their capital stock.

The Constitution of 1852 provided special means for taxing banks; they are placed under strict State surveillance.

As noted, the gradual separation of the State from the municipality, as a tax unit, is very apparent. The more recent laws have tended toward this segregation. Real estate has become the basis of local revenue, while the franchise and excise taxes produce the greater part of the State's income.

[1] *Vid. Revised Statutes Ohio*, sect. 148a.

The last installment on the funded debt of the State is due in 1903. When this has been cancelled the State authorities expect the corporation tax, delinquent tax, liquor tax, and collateral inheritance tax to be adequate to meet the annual State budget. Then all of the taxes collected from realty will remain in the counties wherein they are levied. This will remove one of the most serious objections to the general property tax, for the smaller the tax area, the easier the problem of equalization. But this isolation of the municipality, as a separate tax entity, has not checked the tendency toward centralization, for the State Auditor has supervisory powers, not alone over the various special taxes, but over the general property tax, and the new uniform auditing system [1] places him at once at the head of municipal tax administration.

Every step in the disintegration of the general property tax stands out clearly. At first there was no attempt at valuation; then land only was assessed, and finally all property was levied upon according to its money value. This proved effective only for such property as could be found by the assessor. As intangible property increased in importance the inequalities resulting from the law became more glaring. The powers of the tax officials were multiplied, but they failed to find the concealed property.

Before abandoning the antiquated method, however, one more attempt was made to compel individuals to place their personal property upon the tax lists, and a system of rigorous tax inquisition was inaugurated. It proved futile from the first. The tax on corporations, levied in various forms, remains the only successful method of reaching personal property for tax purposes.

[1] *Vid. supra.*, p. 90.

CENTRAL CONTROL OVER LOCAL FINANCE

Besides the duties of State officers, as shown in the preceding pages, a large measure of central control has arisen from two acts. The first of these is *The Independent Treasury Act* of 1858.[1] Previous to this time the State moneys had been loaned to various banks or been deposited in the several county treasuries of the State. It was now declared that the office of the State Treasurer should be the place of deposit for all the State moneys, and the office of the county treasurer the place of deposit of the county funds. A comptroller of the treasury was appointed, for a term of three years, " for the purpose of securing a more full and perfect system of accountability among the officers of the fiscal department." His duty was practically that of a treasurer. He collected all claims of the State. No money could be paid into the treasury except on his draft, drawn in favor of the State treasury, on the person making the payment, and no money could be drawn out of the State treasury except on the warrant of the Auditor of State, drawn upon the treasurer and countersigned by the comptroller. Direct appropriations by the Legislature were excepted from this clause. The comptroller had under supervision the securities deposited in the treasury by the banking companies of the State as collateral guaranty for the redemption of their circulation. He received and destroyed their mutilated notes and issued new blank notes for registration and circulation.

The auditor and comptroller examined the treasury quarterly, and reported to the Governor, the Governor in turn being empowered to appoint, at his option, an accountant to examine the books of the treasurer, auditor and comptroller. The provisions regulating the manner of payments, vouchers, keeping of books and similar subjects were very

[1] 55 *O. L.*, p. 44.

explicit. The immediate cause of the measure was an embezzling treasurer. The partial cause of its repeal in 1876[1] was an embezzling comptroller. The principal reason, however, was the inutility of the office. It made very cumbersome the least details of business with the State, and led to much annoyance. The comptroller became practically a duplicate auditor. The Governor's message in 1863 stated that "no practical good results from maintaining this office." Auditors continually complained that the machinery of State finance was too complicated, and that there were too many officers. The office of comptroller practically degenerated into that of State House Commissioner, whose duties were transferred to the comptroller in 1871.[2] His reports had dwindled to mere summaries of the auditor's annual statements, and the examination of the treasury was purely perfunctory.

Upon the abolition of the office the auditor became "the chief accounting officer of the State," and his duties were thus defined: "He shall keep in his office full and accurate accounts of all moneys, bonds, stocks, securities and other property and effects paid into or deposited in the State treasury, and of all moneys, bonds, stocks, securities, property and effects paid out of or drawn and transferred from the State treasury, and manage and direct all negotiations and correspondence concerning the same." He is to keep accurate account of all appropriations made by law, and of moneys drawn to meet the same. No money can be taken from the treasury except on his warrant. His books should show at all times the exact status of the treasury, and together with the treasurer, with whom he compares statements weekly, he reports quarterly to the Governor. The extent to which this has transferred to the auditor the control of the State's finances is seen from the fact that the treasurer

[1] 73 *O. L.*, p. 79. [2] 68 *O. L.*, p. 101.

has practically ceased to make an annual report, his statement merely including the totals of the exhaustive report required of the auditor.[1]

The Comptroller of the Treasury had the power to appoint accountants to examine the county treasuries at his pleasure. This power was, however, rarely used. When the office was abolished the State Auditor was given the power to examine the county treasuries upon complaint being made by the county commissioners or county auditor. This is in practice a very great check upon the local treasuries, and cases of such examinations are frequent.

THE UNIFORM AUDITING SYSTEM

By far the greatest step taken toward centralized administration in financial matters, and one of the most marked instances of centralization in the State's history, is the uniform auditing act passed by the last General Assembly.[2]

This act creates a bureau of inspection and supervision of public officers, with the Auditor of State *ex officio* at its head. The auditor appoints not over three deputies, no more than two of them to belong to the same political party, and one clerk. The deputies receive a salary of $2,000 a year and their necessary expenses. The clerk receives $1,500 a year. The auditor shall " formulate, prescribe and install a system of accounting and reporting that shall be uniform for every public office and every public account of the same class," and shall show all the details of all the transactions consummated in the office.

Separate accounts are to be kept for every appropriation

[1] Upon the State Treasurer were laid the duties of State Statistician in 1872. He is also at the head of the State board of elections, and the compiling of statistics and election returns are his principal duties. As a fiscal officer, his position is reduced to that of custodian of the public funds.

[2] 95 *O. L.*, p. 511.

and fund, showing in detail how such funds were used. Separate accounts are also to be kept for every public service industry, " which shall show the true and entire cost, the ownership and operation thereof, the amount collected annually by general or special taxation for services rendered to the public, and the amount and character of the services rendered therefor, and the amount collected annually from private users, if any, for services rendered to them, and the amount and character of services rendered therefor."

Every taxing body and public institution of the State is required to report to the State Auditor such accounts and statistics as he may demand. This report shall contain a full statement of every public service industry owned and operated by municipalities, a statement of the debt of every taxing body showing the purpose for which the debt was created and what provisions are made for its payment.

" It shall be the duty of every public officer and employee to keep all accounts of his office in the form prescribed, and to make all reports required by the Auditor of State."

Every collector of public revenues is required to report once every day to the depository of funds in his city or county.

After the bureau has established its system the auditor shall appoint additional assistants to administer the provisions of the act. These are termed State examiners, and receive five dollars a day and expenses.

The auditor, deputy inspectors and examiners have the power " to examine into all financial affairs of every public office and officer, and shall make such an examination at least once every year." It prescribed that this examination shall be thorough, and the examining officers have the power to call witnesses and administer oaths. Each examination is reported forthwith to the State Auditor.

The expense of maintaining and operating the bureau is

levied upon the counties and municipalities in proportion to the population. The Auditor of State is empowered to levy and collect each corporation's share.

This law practically centralizes the administration of State finances in the State Auditor, and gives him firm control over the local finances. The system has not yet been perfected, and will not be in operation until 1903.

It cannot be said that the State has developed a fixed system of taxation and finance. This is no doubt due to the great economic changes that have taken place within the century. There is, however, manifest a distinct tendency toward the localization of the realty tax and the centralization of the personalty tax. The latter takes upon itself more and more the form of a tax upon corporations rather than upon individuals. Through all the mutations that have resulted from the State's effort to establish an equitable and stated system of taxation there has been a constant and gradually increasing tendency toward centralization in finance administration in every department excepting that of equalization, and in this practically no change has been made since the first State Board of Equalization was authorized. The county auditor has developed into the principal local tax administrator, and the State Auditor has evolved into a powerful supervisor of the State's finances, and now oversees the financial methods of every county and township, city and village and school district in the State. He is at present the most important administrative officer in the State.

CHAPTER III

CHARITIES AND CORRECTIONS

POOR LAWS

UNDER the territorial régime the justices of the peace nominated to the Court of Quarter Sessions "two substantial inhabitants" in every township as overseers of the poor. These overseers nominated their own successors. They could, with the consent of two justices of the peace of the county, levy an assessment, limited by law, for the support of the poor; could contract with private parties for the keeping of the paupers; on receiving the consent of two justices of the peace they could apprentice the poor children, and could remove any persons likely to become a public charge who had not yet attained legal settlement.

The records of the overseers were audited annually by three men selected at the annual township meeting. This committee also fixed the compensation of the overseers. The overseers were also under the supervision of the justices of the peace, who could commit them to jail for malfeasance.[1]

These provisions remained in force until 1805, when the overseers were elected, and reported all needy cases to the township trustees, upon whose warrants alone the overseers could grant relief. The township meeting voted the necessary taxes.[2]

In 1816 the Governor recommended that the poor, instead

[1] *Laws of the Northwest Territory*, 1796, p. 107. [2] 3 *O. L.*, p. 272.

of being a township charge, become a county charge, and that the custom of farming out the poor be abandoned, each county to provide a poor house.[1]

Accordingly it was provided that the county commissioners might build a poor house, and appoint a board of seven directors to have the supervision of it.[2] As the matter, however, remained optional few counties responded, and the Governor was again moved to suggest a revision in 1826. The township system produced great inequality. Litigations were numerous concerning the settlement of paupers, and the settlement laws were cruel, allowing non-resident poor to be transported out of the State.[3]

When in 1831 the poor laws were revised [4] the people of the county were permitted to vote a tax for the building of a poor house. In counties where poor houses were found the township system was abandoned. A board of three directors of the poor was appointed by the county commissioners.[5] These had charge of the poor houses; could bind out poor children, and could grant temporary relief to non-resident paupers. Township trustees could order the directors to admit paupers, and were required to give warning to non-resident poor to leave the township. If such warning was not heeded within one year they could be transported beyond the State.

In counties that had no poor house the township system remained as before.

In 1853 the office of overseer of the poor was abolished, and the township trustees were given their duties.[6] The Probate Judge was empowered to appoint three trustees for the erecting of a children's home, so as to enable the separation of the poor children from the adult paupers.

[1] *Senate Journal*, 1816, p. 17. [2] 14 *O. L.*, p. 79.

[3] *Senate Journal*, 1826, p. 12. [4] 29 *O. L.*, p. 316.

[5] Since 1841, the directors are elected. 39 *O. L.*, p. 26. [6] 51 *O. L.*, p. 466.

The first step toward centralized control was taken in 1857, when the Court of Common Pleas in each county having an infirmary appointed three commissioners, one of whom was a physician, to thoroughly inspect the infirmary and report to the Governor.[1] A commissioner appointed by the Governor examined these reports, and prepared a bill " for the better establishing, regulating and managing of infirmaries." The bill was never reported from its committee.

Numerous revisions of the poor laws have made no substantial changes in their administration. The reforms instituted have been confined to details of supervision, the laws prescribing definite rules of procedure. These will be enumerated in the discussion of the Board of State Charities.

At present there are three departments of local poor relief. 1. The county infirmary, supervised by a board of three directors elected for a term of three years. They report annually to the county commissioners and to the county auditor. They have complete control of the county poor fund, and if it proves insufficient they may levy an additional tax not to exceed six-tenths of a mill. Their duties are carefully detailed by the law.[2]

2. The children's home. Fifty of the eighty-eight counties have established these. The county commissioners appoint a board of four trustees, not more than two to belong to the same political party. They serve without pay and have charge of the home. The law prescribes the details of their duties.[3]

3. The township out-door relief. This is in the hands of the township trustees and infirmary directors, and is limited by law to only such cases as cannot be provided for in the infirmary or children's home.

[1] 54 *O. L.*, p. 217. [2] 93 *O. L.*, p. 261. [3] 95 *O. L.*, p. 80.

In several cities there are district overseers for the care of the poor.

PENAL AND REFORMATORY INSTITUTIONS

County Jails. The territorial statutes provided for the erection of jails in each county under the management of the sheriff, and if they were insecurely built and the prisoners escaped, the county was assessed for the sum for which they stood committed.[1]

The sheriff remained in practical control until 1843, when the Court of Common Pleas established rules for governing the jails.[2] These regulations covered the sanitary condition of the jails, the classification of prisoners, the discipline of prisoners, the providing of medical and legal assistance, and moral instruction for the inmates. The sheriff remained in charge of the prison, administering the rules laid down by the court. He reported to the court the conduct of the prisoners, to the county auditor and commissioners the cost of maintaining the jail and the amount of his fees, and to the Secretary of State such statistical information as would be required. He likewise appointed the jailor and provided food, nursing and all other necessities for the prisoners. The county commissioners were made a sort of financial board to pass on all items so furnished, and to supply heat and furnishings for the jail. The most important section of the law created of the grand jury a board of visitors, with power to condemn the jails and order improvements. The authority to enforce the grand jury's findings was not granted to any one, and except for its moral force it remained a dead letter.

The revision of 1877[3] left the administration of jails

[1] *Laws of Northwest Territory*, 1792, p. 29.

[2] 41 *O. L.*, p. 74.

[3] 74 *O. L.*, p. 365.

practically unchanged, and there is now no general or central authority exercised.

Workhouses. There are eight workhouses in the State. Four of these are in the larger cities, and may properly be called municipal institutions. They are controlled by boards created under special acts. Four are more properly county institutions, because they are maintained by a number of counties that have united in their construction and maintenance.[1] Their management and control are vested in a board of directors, consisting of two persons from each county, appointed by the county commissioners of the district. Their term of office is six years, and they are equally divided between the two predominant political parties. They receive only their expenses, and are subject to the orders of the county commissioners.[2]

State Penitentiary. The State penitentiary at Columbus was completed in 1816. It has been the subject of much legislation and frequent investigation. No definite policy for its control or the betterment of its inmates has been evolved. Its management has been in the hands of a board of directors, appointed at first by the Legislature and later by the Governor and the Senate. Practically the only changes in administration have been in the number of members of this board, their method of appointment, and the designation of the subordinate officers they may appoint. These changes have been dictated by party politics, the penitentiary being a fruitful source of party manipulation. Eleven times has the Legislature changed the complexion of this board. The number has varied; usually there have been three, five or six members, and at one time a legislative commission of three nominated three directors, two of whom were to be residents of Columbus. The commission had

[1] These counties form "workhouse districts." [2] 90 *O. L.*, p. 193.

the power of removing their nominees.[1] Complete changes were made in the management in 1858, 1860, 1864, 1867, 1877, 1878, 1886 and 1890. Such fluctuations were not productive of sterling administration. Each change usually wrought complete alteration in the prison employees, from the warden to the guards.

Since the organization of the Board of State Charities there has been a decided improvement in the methods of dealing with the prisoners. These will be mentioned later.

The only supervisory power exercised over the management of the penitentiary is the auditing of the accounts by the State Auditor and the power of the Legislature to investigate by special committee. This has often been resorted to.

A State reformatory was begun at Mansfield in 1883. Its management has been under the control of a board of directors, their number fluctuating. At present there are six members on this board, appointed for six years, and they are equally divided between the two political parties. They receive a salary of five hundred dollars a year.

Under the act of 1856[2] a reform school for boys was established at Columbus. Its first board of directors was not only appointed by the Governor, but all the rules and regulations that it formulated were made subject to the Governor's approval. This authority was taken away two years later, and the directors have since then been subject only to the supervisory powers of the Legislature.

The Girls' Industrial Home was authorized in 1869,[3] and was established at Delaware the following year. It is governed by the usual board of directors, appointed by the Governor and the Senate. There is also a board of visitors, composed of three women appointed by the Governor, who visit the home every three months and report under seal to the president of the board of trustees.

[1] 55 *O. L.*, p. 136. [2] 53 *O. L.*, p. 66. [3] 66 *O. L.*, p. 110.

The Governor has the power to remove inmates from the State penitentiary to the reformatory, and from the reformatory to the Girls' Industrial Home or the Boys' Industrial Home, also to remove incorrigibles from the industrial homes to the reformatory.

It is thus evident that no degree of centralized control has been established over the State penal institutions. There is neither harmony between the local and State institutions, nor among the various State institutions, except such accord of action as has been established by the influence of the Board of State Charities.

State Charities. In 1821 the "Commercial Hospital and Lunatic Asylum of Ohio" was established in Cincinnati. It was intended primarily for a county institution, but the State from the first has contributed toward its support. The name has been changed several times, as well as the method of appointing its trustees. The majority are now provided by the city council and county commissioners. This institution never supplied room for many of the State's insane. These were confined in the county jails until 1838, when provision was made for an asylum for curable cases only.[1] This hospital was not large enough to admit all the cases. In 1844 there were still twenty-one insane persons confined in the jails. Here the accommodations provided were utterly inadequate. After the establishment of county infirmaries it became unlawful to confine the insane in the jails, the county commissioners providing quarters for them in the infirmaries. The State has never provided adequate room for all its insane. In 1834, before the establishment of the first asylum, there were one thousand insane persons in the State. In 1850 there were four thousand, and provision was made for only four hundred of them.[2] In 1870 there were two thousand insane in the infirmaries. It was not until the

[1] 36 *O. L.*, p. 51.

[2] *Executive Documents*, 1850, vol. i, no. 1.

Board of State Charities formulated a comprehensive plan that the State adopted measures for caring for all of its insane.

The number of hospitals for the insane now established is seven. Each one has its separate board of trustees, appointed by the Governor and Senate. There has been a great amount of fluctuation in the number of these trustees, in the requirements as to their places of residence and the minutiae of the instructions prescribed by law. For many years there was not even uniformity in the number of trustees for the various hospitals, but since 1876 [1] the number has been uniform. The State is now divided into districts, one for each asylum, and the Governor appoints a board of six trustees for each hospital, these trustees to be residents of the district, two of them of the county in which the hospital is located. The laws prescribe in great detail the powers of the boards, the number of officers they may employ, the maximum salaries they may pay, and what appointees they may remove without cause. They are subject to the reviewing power of the Governor, who may at any time order an investigation of any of the State charitable institutions.

The State has also established a Hospital for Epileptics and one for Feeble-minded Youth.

Other State institutions are the Institute for Deaf and Dumb, authorized in 1827;[2] the Institute for the Blind, established in 1837;[3] the Soldiers' and Sailors' Orphans' Home in 1875,[4] and the Soldiers' and Sailors' Home in 1886.[5] The Governor appoints, with the consent of the Senate, the trustees of these institutions. They report annually to the Governor, and are subject to his investigating power.

[1] 73 *O. L.*, p. 80. [2] 25 *O. L.*, p. 87. [3] 35 *O. L.*, p. 116.
[4] 72 *O. L.*, p. 163. [5] 83 *O. L.*, p. 107.

THE BOARD OF STATE CHARITIES

Whatever degree of centralization has been attained in the administration of the State charities has been due to the influence of the Board of State Charities. Its power has been confined to investigations and recommendations, but it has exerted a powerful moral influence over the institutions of a local nature as well as those of the State.

Previous to 1866 there had been much complaint of the loose manner in which the benevolent institutions had been maintained, and the lack of one supervising authority.[1] In that year Governor Cox recommended that a State Board of Charities be organized, modeled after that of Massachusetts.[2] The board was created, but it fell far short of its model in the power granted. In a fit of legislative economy the board was abolished in 1871, but was recreated in 1876. As the personnel of the board remained substantially unchanged, and its powers practically unmodified, I shall treat the history of its work as though this break of five years had not occurred.

The board consists of six members, appointed by the Governor and the Senate for a term of three years. No more than three are to belong to the same political party.[3] The Governor is *ex officio* president of the board. The members receive no compensation, but their expenses are paid and they may hire a secretary, who receives $1,200 a year and his expenses.

The board is instructed to "investigate the whole system of public charities and correctional institutions of the State, examine into the condition and management thereof, especially of prisons, jails, infirmaries, public hospitals and asylums, and the officers in charge of all such institutions shall

[1] *Vide, Governor's Reports*, 1850 and 1865.

[2] *Executive Documents*, 1866, vol. i, p. 272.

[3] 77 *O. L.*, p. 227.

furnish to the board, on their request, such information and statistics as they may require," and the board prescribes the forms for such reports.

The powers of the board are circumscribed. They are practically limited to investigations of State and local institutions, with the power to report the findings to the Governor, to approving plans for local and State penal and charitable institutions, and suggesting legislation. The efficiency of such a board depends largely upon its personnel. In this the Ohio State Board has been most fortunate, and it has been the policy to reappoint the members. Only once, in 1890, did politics interfere with the efficiency of the board. One member of the board served from its organization in 1867 until 1899, when he resigned because of ill health. Another member served twenty-one years, another thirteen years, another eleven years, one ten years, and one has served five years. Three of the latest appointments were made to fill vacancies due to the death of members. The most important member of the board is the secretary, for upon him devolves the work of visiting the county institutions, gathering statistics and preparing the annual report. The first secretary was the Rev. A. J. Byers, and he served constantly until his death in 1890, when his son was elected to the position. The energy of these secretaries has contributed in a particular degree to the good work of the board.

The board first addressed itself to the problem of securing efficiency in the local institutions and co-operation between the local and State authorities. The secretary of the board visited in person every city jail, infirmary and workhouse in the State.

Apparently no attention had been paid to the condition of the county jails and infirmaries, for the first reports of the board reveal conditions too loathsome to put in print. The jails were miserably built, and totally unfit for the keeping of persons.

"Children, youth, the young man, the middle aged, the old, all at first simply accused of crime, and more or less wrongfully accused, * * are found congregated in our jails. And to perfect the wrong they are crowded often in an ill-ventilated, dirty, dark prison, where the whole being, physical, mental and moral, is soon fitted to receive all uncleanness with greediness." [1] "It is a startling and terrible proposition, sustained by this report, that Ohio is to-day supporting at public expense as base seminaries of crime as are to be found in any civilized community." [2] Often there was but one cell, and no provision for separating the sexes.[3] Many of the jails had been repeatedly condemned as unfit by grand juries, but the public refused to vote funds for new buildings, and the condemnation was made void. There was no classification of prisoners, the rules made by the Common Pleas Court never being carried out. Nor were registers kept of the criminals nor adequate discipline enforced. Witnesses were detained in the jails and often locked up with the prisoners. City prisons were no exception to the rule.

The exposing of these evils had an immediate effect. Definite remedial legislation was not attempted until 1881, in spite of the annual protests of the board. In that year a county board of visitors was created, to consist of five persons named by the Judge of the Common Pleas Court, three of whom were to be women.[4] They inspect all charitable and correctional institutions of the county, and it is their "duty to keep themselves fully advised of the condition and management of all such institutions, especially the infirmary, county jail, municipal prisons and children's home." These

[1] II. *Report Board of State C arities*, p. 20. [2] *Ibid.*

[3] "A young woman once confined for any cause in our county jail is well nigh consigned to go from bad to worse." *Ibid.*

[4] 79 *O. L.*, p. 107.

institutions they shall visit once every three months, and file a report of their work and recommendations with the county clerk and the Board of State Charities. The law was merely permissive, and only the vigilance of the State Board saved it from being a nullity.[1]

Public sentiment has been so well directed, through the various agencies established by the board, that at present nearly all of the counties have modern jails, and even the poorer class of prisons are humanely kept.[2]

Because of the greater number and the miscellaneous character of inmates, and the utter carelessness and often heartlessness of the superintendents, the county infirmaries were in a much more deplorable condition than the jails. The details described by the secretary of the board as prevailing in the majority of these institutions are so revolting that one can scarcely believe that such conditions could exist without arousing an indignant public conscience.[3] The neglect of the superintendent was partly due to the lack of oversight exercised by the county and State, and partly to the fact that the office was used for political purposes, although it was looked upon with contempt "by even the better class of politicians;" "men notoriously lazy in habits, selfish in nature, socially, intellectually and morally unfit, are now occupying these positions, not only to the detriment of the institutions over which they exercise superintendency, but to the degradation of the office."[4] There have been constant recommendations for taking the institutions out of politics. No change has been made. The infirmary di-

[1] Thirty of these local boards were established the year after the passage of the act. In 1883 there were fifty; by 1892, seventy-two counties had responded, and since 1893 every county has such a board.

[2] "A dirty and badly kept jail is now the exception instead of the rule." *Report*, 1880.

[3] *Vide*, Especially the first five reports of the Board. [4] III. *Report State Board.*

rectors are elected, and they appoint the superintendent. They report to the county commissioners every six months and inspect the infirmary every month. "We do not expect any further improvement in our county infirmaries until the present system of their administration is radically changed."[1] However, there has been a complete change in the attitude of the directors, responding to an alert public opinion. The newer buildings are well planned and the management is humane,[2] the people having thoroughly reformed the abuses that then existed on their attention being called to them by the disclosures made in the reports of the secretary of the board.[3]

The other causes of the early misery are more nearly remedied. They are the housing of the insane and of infants in the infirmaries with the county paupers.

The first reports describe the treatment of the insane as "simply brutal," and their condition as "sickening in its detail of filth, neglect, immorality and unthriftiness."

In 1869 there were 7,401 inmates in the infirmaries, and of these 12.5 per cent., or 1,131, were insane, 4.8 per cent. were epileptic and 4.6 per cent. idiotic, and 12.9 per cent. were children. Most of the institutions had absolutely no means of separating the insane from the sane, excepting a few miserable sheds or outbuildings, where the more violent cases were confined. Nor was there in many cases provision for separating the sexes of the insane. The county's unfortunates were simply given over to an inhumanity that was worse than neglect.

The census of 1870 showed the number of insane in the State as 3,414. In the State asylums there was room for

[1] *Executive Documents*, 1885, i, p. 117.

[2] "The infirmaries almost without exception have been improved in the past ten years. Some of the best are now found in counties which then had the worst." *Ibid.*

[3] *Report*, 1880, p. 20.

only 1,346. The rest were in county infirmaries and private institutions. Under pressure of the State Board, reinforced by the recommendations of the Governor, other asylums for the insane have been built. The board has prepared a plan which contemplates the care of all the State's insane wards in proper hospitals. The cottage system has been adopted, and this allows of great elasticity in the number of inmates accommodated. It was thought that by 1900 room would have been provided for the removal of all insane from the infirmaries. But construction on the new hospital was delayed, and the time limit was extended to 1903,[1] after which date it will be unlawful to house insane persons in the infirmaries. The insane confined in private hospitals are not under State surveillance.

In 1866 it was left optional with the counties to establish children's homes. These were open "to all persons resident of the county where such home is located, under sixteen years of age, and such other persons under such age from such other counties in this State where no home is located, as the trustees of the children's home and the party or parties bringing them in custody may agree upon." [2] By 1880 eleven had been built. This number was increased to twenty-five in four years, and at present there are fifty. In 1880 there were 1,978 children in the infirmaries, by 1892 the number dwindled to one hundred and fifty, and at present there are none.

Since 1886 [3] it has been unlawful to place any child in an infirmary who is admissible to a children's home or other charitable institution, no child over one year of age being allowed in the infirmaries, and if there is no home in the county, the infirmary directors are to place the little ones in suitable families by indenture or adoption. If this is not

[1] 94 *O. L.*, p. 166. See also table of statistics at the end of this chapter.

[2] 63 *O. L.*, p. 45.

[3] 83 *O. L.*, p. 196.

possible, they shall be maintained at the expense of the county in the nearest children's home at which they can be received, or in some other proper charitable institution, "which may have the approval of the Board of State Charities." The law carefully details the treatment of these children, and defines who are eligible to the homes. The county board of visitors is given power to investigate all cases, and recommend any officer of the home for dismissal. The board of visitors also supervises the children that are bound to private families by indenture, recommending the termination of the contract in all cases where abuse is apparent.

In the management of the State institutions no such flagrant violations of decency were found. They were open to public scrutiny.

The penitentiary, however, has not shared in the general progress made by the other institutions. Its management has changed too often. In the thirty-five years preceding 1869 there had been fourteen wardens, giving each one a term of less than three years. Since that date changes have been scarcely less frequent. In 1822 the penitentiary was put in charge of a keeper, appointed by the Legislature. He reported annually to the Legislature, and was quite independent of the board of managers. The penitentiary was practically neglected by the Legislature. The walls were allowed to fall to ruin, and it became easy for prisoners to escape, in some years quite as many leaving the prison by that method as by regular discharge.[1] There was lack of discipline. A fire destroyed a portion of the buildings in 1830, but no adequate repairs were started until three years later. In 1828 the Governor reported that because there was no room for all the prisoners he was compelled to pardon many.[2] In 1834 a new prison was erected, and new regulations produced somewhat better results.

[1] *Report of Keeper*, 1828, p. 160.

[2] *Senate Journal*, 1828, p. 15.

"For eighty years the Ohio Penitentiary has been the only prison in the State for high grade criminals. The first year of its history closed November 15, 1815, with seven prisoners. The last closed November 15, 1894, with two thousand and twenty-four prisoners. During all these years, so far as shown by annual reports, the general principles adhered to in the management of the prison have remained unchanged." [1] In 1884 a special commissioner, appointed by the Governor to investigate the condition of the penitentiary reported "that financial results rather than reformation of the prisoners always was, and still is, the dominating idea of the prison."

As late as 1884 public hangings were conducted, the parole system was unknown, and physical torture still prevailed. The system of prison labor was antiquated; criminal insane were confined in the penitentiary. The administration of the prison's affairs was strictly partisan. Even prison labor was suspended for a time in response to a demagogic demand for a cessation of "competition between convict labor and free labor." [2] The persistent efforts of the Board of State Charities have been successful, for since 1886 many reforms have been instituted. Among them are the substitution of the solitary cell for the ancient forms of corporal punishment, the institution of the Bertillon system, the abolition of the lock step, the enlargement of prison labor, the introduction of parole and the indeterminate sentence, electrocution, night schools.

The board has continually opposed the enlargement of the penitentiary, and recommended the erection of intermediate prisons. The establishment of workhouses and the State reformatory was directly due to these constantly reiterated suggestions.[3]

[1] *19th Report Board of State Charities.*

[2] 81 *O. L.*, p, 72. [3] See *Executive Documents*, 1877, vol. iii, p. 293.

So also have they materialized, through constant agitation, their suggestion for a State Home for Epileptics,[1] the Asylum for Feeble-minded, and the Home for Aged and Infirm Deaf and Dumb Persons. To this latter institution they have the power to remove such persons as they deem necessary.[2]

In general matters the board has gradually assumed more and more central control. Out-door relief had become a burden under a system which placed the poor fund in the hands of the township trustees, and if they failed to provide for the poor, the county infirmary directors were authorized to do so. Thus the pauper retained his residence in the township, and was provided for at the expense of the whole county. This removed the vigilance of the local tax-payers. Each township struggled to get its quota of the county poor funds. It practically meant that the township officers found the paupers and the county paid for their support. "In many counties the expenses incurred by infirmary directors for out-door relief are more than the expenses incurred by them for paupers in the infirmaries, and to a great extent the effect of this system is to pauperize those who receive it and those who can hope to get it, when with manly independence they could support themselves." [3]

The board succeeded in bringing about the united action of nearly all the infirmary directors of the State to ask for the abolition of this system. This was done in 1897.[4] No person is now entitled to out-door relief who can be provided for in the county infirmary, and the poor fund is under the direct control of the infirmary directors, and they are responsible for its administration. The law effected an immediate saving of $250,000 a year.[5]

[1] *Exec. Doc.*, 1878, vol. i, p. 533.

[2] This home is not yet completed.

[3] *19th Report State Bd. of Charities*, p. 75.

[4] 93 *O. L.*, p. 265.

[5] *25th Report Bd. of State Charities*, p. 168–9.

One of the evil results of the system of irresponsible management was the erection of wholly unsafe and poorly adapted buildings for county and State institutions. Fire destroyed the Northern Insane Asylum in 1872 and the Institution for Feeble-minded Youth in 1880, and a number of the inmates were burned to death. Most of the county jails and infirmaries were mere fire traps. Fire-proofing was universally discarded. In 1864 the building of the Deaf and Dumb Asylum had become so dilapidated through neglect that a new building had to be provided.

In 1870 the board published plans for a county infirmary, hoping that the county commissioners would profit by it, but no attention was paid to these plans. Later the county authorities were made to submit such plans to the board for "suggestion and criticism," [1] and this did not insure proper buildings. In 1896 the board was given the power to reject or amend the plans of all penal and charitable State, county or municipal institutions.[2] It is now customary for the authorities to consult the board before provisional plans are made. Plans for State institutions are practically designed by the board.

The result is seen in comparing the buildings of recent years with those of the earlier period. The state asylums and penal institutions especially reveal the wisdom of this provision. The cottage system has been adopted for the new asylums and the reformatories. This allows a proper expansion to meet the growing needs of the State without incurring the inconveniences and dangers accompanying the overcrowding of such institutions.

There is no State control over local charities, but the board has encouraged the organization of associated charities and the co-operation of the local poor authorities with such boards. County and city officials may now accept the

[1] 77 *O. L.*, p. 227–8. [2] 93 *O. L.*, p. 105.

results of investigations made by associated charities or other local charitable societies and grant relief thereon. The board has thus created a voluntary co-operation between private charitable organizations and the local authorities. This is particularly true of the cities, where much economy and efficiency have resulted from the united efforts of the private and public charitable agencies.

The voluntary co-operation of State and local authorities has been secured through various agencies. The thorough annual reports; the monthly "Ohio Bulletin of Charities and Corrections," published by the secretary of the board; a constant correspondence maintained between the board and the local authorities; annual conventions of all the officers of local and State institutions, and the encouragement of attendance of national bodies, such as the Prison Conference and the National Conference of Charities and Corrections, these are some of the means that the board has employed, in the absence of legal authority, to perfect a harmony of action between the local and the State institutions.

But there has been a constant increase in the legal powers of the board. It has several times been recognized by the Legislature as the proper body for framing laws for the regulation or establishment of State institutions under its surveillance, as when in 1877 it framed the law by legislative request for establishing workhouses.[1] In 1880[2] the board was reorganized and its powers enlarged, making it necessary that all plans for jails, infirmaries and children's homes be submitted to them for "criticism and suggestion," and the Governor was given power to order an investigation at any time by the board of any State charitable or penal institution, they to have the usual power of sending for and examining witnesses. A number of searching examinations have been held under this provision. It was also made the

[1] *Executive Documents*, 1877, vol. iii, p. 293. [2] 77 *O. L.*, p. 227.

privilege of private citizens and officers to make complaint to the board of any mismanagement known to them. This has likewise led to a number of investigations. A subsequent amendment in 1895 gave the board the power to "approve" plans for jails, infirmaries and workhouses.[1]

The importance of the Board is reflected in the poor laws of the State. These were codified in 1896, and no amendments were found to have been made except such as had been recommended directly by the board.

The Governor usually seconds the requests of the board in his annual message.

While the board has thus wrought many beneficent changes in the local institutions and produced a certain degree of centralization, it has not been so successful in instituting harmony of action between the State institutions. These remain quite as decentralized as formerly, although there are several slight tendencies toward centralization manifest even here.

The first is seen in the attempt of the board to wrest the State institutions from political control. I have several times alluded to the change in the administration of the State Penitentiary. Other institutions have undergone many such fluctuations, but as there was less opportunity for jobbery, and as the nature of the institutions did not admit of such flagrant violations of the principle of steady management, the internal changes were not as frequent as the changes in the governing boards.

Again and again have both the Governor in his annual messages and the board in its annual reports urged the Legislature to take radical action in the matter. There has been some approach to uniformity since 1895. Nearly all the boards governing State institutions now consist of six members, appointed by the Governor and the Senate; they are

[1] 93 *O. L.*, p. 105.

equally divided between the leading political parties, and the Governor is *ex officio* chairman of each board. The term of office is six years, and there is usually no salary.

In 1896 provision was made for an interchange of the commodities of the various institutions. The products manufactured in the asylums and those grown on the various farms of the industrial schools were by this measure to be used to supply the needs of a number of the State institutions. This law has not received the sanction of the State Board, nor has it ever been put into successful operation.

The board has organized the Conference of the Boards of Ohio Hospitals, which meets at stated intervals, and forms a means of voluntary co-ordination between the several State institutions. At its meetings plans of administration and technical matters are discussed. Many modifications suggested by these discussions have been adopted by the various institutions.

Two facts deserve special emphasis in this review of the State charities and corrections. The first is the moral influence of a well organized and earnest board with only inferior legal powers. A summary of the principal achievements of the board would include:

1. The grading of the prison system, including the reform schools for juveniles, the State reformatory, the workhouses, and the enacting of the indeterminate sentence law, parole law and habitual criminals law; the creation of an Advisory Board of Pardons, to recommend cases to the Governor's clemency, and the purging of the county and city jails.

2. The removal of children from county infirmaries and the establishing of children's homes.

3. The removal of the insane from the infirmaries and the building of four State insane asylums.

4. The building of an asylum for epileptics.

5. The building of an asylum for adult idiots.

6. The establishment of boards of county visitors.

7. The inauguration of the State Conference of Charities and Corrections, this being a potent co-ordinating force between State and local institutions.

8. The establishment of the Conference of the Boards of Ohio Hospitals, a co-ordinating factor between the various State institutions.

9. Creation of a public conscience on all matters relating to local and State charitable and penal matters. The board recognized from the first that its greatest work would be in the making of this public sentiment. In the second report it declared that "the only safeguard against the continuance and recurrence of these abuses is the constant supervision of all public institutions by the State through her authorized agents." "Let it be understood that all public institutions are liable to visitation and examination at the most unexpected times, and that abuses will be unsparingly exposed, and how soon the evils now existing will disappear." And in the twenty-fifth report: "It has been the constant aim to educate the public mind, and to enforce reforms only when the people of the State have themselves seen reasons therefor." The actual influence of the board through extra legal methods, largely the personal ability and application of the members, has been rapid in its development. The public response was immediate and effectual.

The second fact is the slow yet constant tendency of the Legislature to yield to the influence of the board. In recent years this has grown more apparent. However, the Legislature still maintains an unyielding attitude toward many very important suggestions that have annually and patiently been reiterated by the board for twenty-six years. Some of these should soon be crystalized into law. Such influence as the Legislature has allowed the board to exercise over legislation has been productive only of good results.

The legal power of the board, as shown above, has been slightly increased. The drift toward centralization is evident, though the current moves very sluggishly. The beneficial results attained are manifest.

I will add that the Legislature has consistently refused to be liberal with the board. The meagre appropriations have hardly covered necessary expenses. The work of the board is not easy. In order to visit all of the State institutions monthly, as the statute prescribes, the board is divided into committees, each committee taking charge of a given group of institutions. The niggardly salary of twelve hundred dollars paid to the secretary is utterly incommensurate with the work he has to do.[1] The Legislature has shown a disposition to ignore the constant requests of the board and of the Governor for an increase in the appropriations. The sum appears the more unjust by comparison with appropriations made for other departments and the fees received by other officers. The State inspector of oils, e. g., receives ten thousand dollars a year, and many other State officers receive four thousand dollars a year.

TABLE SHOWING THE AMOUNT OF POOR RELIEF, BOTH IN INFIRMARIES AND OUT-DOOR RELIEF.[2]

Year.	Inmates in Infirmaries.	Cost of Keeping Infirmaries.	Number Receiving Out-door Relief.	Cost of Out-door Relief.
1875	5,879	$547,197 00	4,300	.....
1880	7,363	505,429 00	30,689	$251,269 00
1885	14,918	620,058 16	22,258	381,165 10
1890	12,293	640,811 67	31,613	401,858 76
1895	14,310	731,776 68	43,521	451,748 69
1898*	16,281	836,648 53	22,757	228,728 52
1900	15,346	886,991 63	12,597	236,242 01

*New law abolishing out-door relief.

[1] *Executive Documents*, 1890, i, p. 480.

[2] Compiled from reports of the Secretary of State and the Board of State Charities.

TABLE SHOWING CONDITION OF STATE CHARITIES AND CORRECTIONS, 1900.[1]

Name of Institution.	Location.	Number Inmates.	Current Expenses.	Per capita Cost.
Athens State Hospital for Insane.	Athens	1,257	$123,427 45	$129 89
Cleveland " " "	Cleveland	1,466	198,652 70	165 56
Columbus " " "	Columbus	1,925	216,960 86	158 37
Dayton " " "	Dayton	1,071	133,141 33	162 39
Longview Hospital " "	Carthage	1,369	159,554 67	144 52
Massillon State Hosp. " "	Massillon	907	106,290 61	180 53
Toledo " " "	Toledo	1,891	219,335 14	152 53
Ohio Hospital for Epileptics.	Gallipolis	1,164	163,431 22	177 07
Institution for Feeble-minded Youth	Columbus	1,168	177,982 18	167 75
" for Deaf and Dumb. ..	Columbus	570	108,126 19	221 57
" for Blind	Columbus	389	72,789 84	224 69
Soldiers' & Sailors' Orphans' Home	Xenia	988	161,973 44	169 58
Soldiers' and Sailors' Home.	Sandusky	2,056	183,790 69	151 15
Boys' Industrial School.	Lancaster	1,267	110,870 98	136 71
Girls' Industrial Home.....	Delaware	392	39,789 03	125 91
Ohio Penitentiary.....	Columbus	2,789	373,893 09	163 87
Ohio State Reformatory	Mansfield	492	134,049 43	425 55
Total State Institutions...	.....	21,162	2,684,067 85	

TABLE SHOWING THE WORK OF THE MUNICIPAL CORRECTIONAL INSTITUTIONS, 1900.

Municipal Institutions.	Location.	Number Inmates.	Current Expenses.	Per capita Cost.
Workhouse.	Canton	727	$15,267 12	——
"	Cincinnati	3,208	54,578 28	$126 00
"	Columbus	922	17,581 25	135 96
"	Dayton	730	12,809 39	——
"	Toledo	1,006	23,299 95	156 95
"	Zanesville	846	16,250 00	25 18
"	Cleveland	3,564	22,303 71	——
House of Refuge	Cincinnati	773	59,000 00	142 09
Total.....	.....	11,776	220,989 20	

[1] Compiled from reports of Secretary of State and Board of State Charities.

TABLE SHOWING THE WORK OF COUNTY CHARITABLE AND CORRECTIONAL INSTITUTIONS, 1900.

County Institutons.		Number Inmates.	Current Expenses.
County Infirmaries	85 reporting.	*15,346	$771,522 12
County Children's Homes	32 reporting. 18 not reporting.	3,153	240,357 41
County Jails	88	11,640	117,742 25
Out-door Relief as Reported by Infirmary Directors	——	15,064	179.401 83
Out-door Relief as Reported by Township Clerks	——	48,533	193,505 40
Soldiers' Relief Commission	——	35,000	318,063 33
Totals		126,035	$1,820,592 34
Grand totals		158,973	4,725,659 89

*687 idiots, 1267 insane, 304 epileptics.

CHAPTER IV

STATE HEALTH ADMINISTRATION

THERE was practically no attempt to organize a health administration previous to 1867. Isolated laws had been enacted to prevent the spread of contagion, and their enforcement was left entirely to the local police. There were no local health officers, except in the largest cities, until 1867, when the laws provided local boards of health for cities.[1] These consisted of six members appointed by the council, with the Mayor *ex officio* as chairman. The boards had power to appoint a health officer, to abate nuisances, to provide for vaccination, and to suppress brothels. These powers were later made to include the appointment of sanitary police and the inspection of certain foods, as milk, meats and bakers' goods.[2]

There had been an earlier attempt to gather vital statistics through the Probate Judge's office. It was not successful until the establishment of the State board of health, for the Secretary of State, to whom the reports were sent, had not enough authority to command the local officers to make the requisite returns.

In 1867 clergymen were made to report all burials to the Probate Judge.[3] Two years later the Probate Judge was empowered to secure records of births and deaths from the county assessors, to whom all physicians and midwives were to report. These statistics were sent to the Secretary of

[1] 64 *O. L.*, p. 76. [2] 71 *O. L.*, p. 158. [3] 64 *O. L.*, p. 63.

State.[1] This law was quite universally disregarded,[2] but was substantially re-enacted in 1871, making the assessor somewhat more responsible, and adding that he should report all cases that required vaccination to the Probate Judge, who should then make provision for the same.[3]

This was substantially the status of health legislation when the State board of health was established in 1886. The Governor's message in 1881 placed the matter before the Legislature. "It is believed by those who have made the subject a study that one-third of the mortality of the State is due to causes that may be prevented. Your attention is called to the propriety of appointing a State board of health, with the duty imposed of securing information upon the extent of unnecessary mortality and suggesting methods of prevention thereof. This course has been adopted by twenty-seven of our sister States."[4] The suggestion needed several reiterations before it sufficiently impressed the law-makers.

The State board originally consisted of seven members, appointed by the Governor and the Senate, and the Governor and Attorney-General, who were members *ex officio*. The board elects its secretary, who now receives two thousand dollars a year and expenses. The members receive five dollars a day and expenses. Its powers are embraced in the sweeping dictum that it "shall have supervision of the interests of the health and life of the citizens of the State."[5]

Its duties are two-fold: toward the State and toward the locality. Under the former may be grouped. (a), its power to make careful inquiry in respect to all conditions that determine the health of the State and the gathering of vital statistics, these to be embodied in the annual report,

[1] 64 *O. L.*, p. 69. [2] *Vide, Report of Secretary of State*, 1869. [3] 69 *O. L.*, p. 22.
[4] *Executive Documents*, 1881, Vol. II. [5] 89 *O. L.*, p. 77.

which contains much useful information " for dissemination among the people."

b. It is to " advise the government, or other State boards, in regard to the location, drainage, water supply, disposal of excreta, heating and ventilating of public buildings."

But the more important function of the board is toward the local authorities. This at first was a supervisory function that entailed responsibilities upon the local officers toward the board rather than directed the board to do definite things for the locality. The section is comprehensive. " It shall be the duty of all boards of health, health authorities and officials, officers of State institutions, police officers, sheriffs, constables and all other officers and employees of the State, or any county, city or town thereof, to make and enforce such quarantine and sanitary rules and regulations as may be necessary to protect the public health, in so far as the success and efficiency of the board of health may defend them. And in the event of failure or refusal on the part of any member of said boards, or other officials or persons, in this section mentioned, to so act, he or they shall be subject to a fine of not less than fifty dollars upon the first conviction, and upon conviction of the second offence not less than one hundred dollars."

It was further declared the duty of all local authorities and of physicians in localities where there were no health authorities to report promptly to the State board any contagious or infectious diseases enumerated in the statute.

The State board of health thus was given more centralized power from its inception than Ohio has been in the habit of granting to such commissions. The law aimed at a complete health administration, ranging from the State board at the top to the constabulary at the bottom. But the vulnerable part of the system lay in the lack of local boards. Only cities had established these. Sheriffs, police and constables are not efficient health officers.

Accordingly, in 1888 local boards of health were provided for each city or village with a population of five hundred or more,[1] to consist of six members appointed by the council, the Mayor *ex officio* as chairman.[2] The board appointed a health officer, a clerk, and as many ward or district physicians as it deemed best. It defined the duties and fixed the pay and tenure of its appointees. Though the law was mandatory, it contained no provision for its enforcement. Two years after its enactment forty-two villages still had failed to organize health boards. The State board found just cause for complaint in the slowness with which the smaller communities responded. The villages usually provided no pay for health officers, and the personal interest of the State board was necessary to urge the appointment of local boards.

In 1893 an important revision was made in the sanitary laws.[3] The powers of the local boards were increased, particularly in the following directions:

a. Its power to abate nuisances. Nuisances can be abated and removed by its officers, the cost being a tax upon the property from which the nuisance is removed. Any one disobeying the order of the board is treated as a misdemeanant; the statute defines the proceedings in such cases.

b. Its powers of inspection. It may cause any house suspected of contagion or infection to be inspected. It may appoint inspectors for dairies, slaughter houses, meat shops, food and water supplies for animals. These inspectors are vested with the powers of the board. It is required to inspect quarterly the sanitary condition of all the schools.

c. Its power over quarantine has been made absolute, extending to common carriers, the erection of pest houses,

[1] 85 *O. L.*, p. 59.

[2] Several of the larger cities were allowed to retain their former boards.

[3] 90 *O. L.*, p. 87.

the prohibition of public gatherings; likewise have been extended its powers of disinfection and vaccination.

d. Its regulations intended for the general public are adopted, recorded and advertised as city or village ordinances, and are given the same force.

e. That accurate statistics may be forthcoming, provision is made for the registration of all births, deaths and marriages. The board requires all physicians to report at once all cases of infectious or contagious disease. No burials can take place without permission. The board reports annually to the council and to the State board. The penalties attached to this law are severe, and no proof of actual damage is required for conviction.

But this statute goes farther than merely providing for the cities and villages. It creates of the township trustees a township board of health, with all the powers and duties of the municipal boards. Under its provisions 552 municipal and 1066 township boards were organized the following year, making an army of over ten thousand men actively engaged in sanitary work. By the second year after its enactment all the villages and townships had responded to the law.

With this increase of authority over the local boards came a corresponding enlargement of the powers of the State board. It is given "supreme authority in matters of quarantine." It can make special or standing orders for the prevention and spread of contagion, the transportation of dead bodies, and "all other sanitary matters as may be best controlled by a universal rule."

It may alter any regulation made by local boards, and in case of emergency, or the delinquency of local officers, it takes complete charge of local matters, making such orders as it deems fit, and enforcing the regulations established by the local boards. In such cases all local police and health

officers must enforce the orders of the State board under pain of heavy penalties.

The local boards may at any time require an investigation by the State board of the local water supply, sewerage, plumbing and any other matters of special import. But the most significant of the supervisory powers yet granted to the State board of health is contained in the following section: "No city, village, corporation or person shall introduce a public water supply or outlet of any system of sewerage now in use unless the proposed source of such water supply or outlet for such sewerage system shall have been submitted to and acquired the approval of the State board of health." Power is given the State board to prosecute all delinquents under this provision.

Since 1894,[1] municipalities, villages and townships may issue bonds for the creation of a "Sanitary Fund," to be used for street cleaning, quarantine and other sanitary matters. The Mayor, civil engineer, health officer and street commissioner constitute a "Sanitary Board" that controls this fund. When there is no civil engineer the local board of health exercises this power, and in 1898 municipalities were given leave to erect garbage disposal plants, but all plans must first be approved by the State board.[2]

In 1896 provision was made for more thorough plumbing inspection.[3] The local boards of health now appoint a board of examiners to examine all plumbers, and no one is allowed to act either as journeyman or master plumber without a license from this board. The board of health, with the sanction of the city council, may appoint an inspector of plumbing. The latter provision is carried out only in the larger cities.

Indeed, the law was framed by the plumbers of the cities, and proved so cumbersome in its details for the smaller

[1] 90 *O. L.*, p. 307. [2] 94 *O. L.*, p. 342. [3] 92 *O. L.*, p. 342.

municipalities that the State board of health recommended its simplification; this was done the succeeding year.

A final revision of the health code in 1902 reduced the number of members on the State board to five,[1] and added materially to its power. The appointment of health officers in townships and villages must now be sanctioned by the State board, and if any city, village or township fail to appoint a health officer, the State board has authority to do so. All rules and regulations made by local health officers must first be approved by the State board, so that the State board now can exercise a fair degree of authority over local health officers.

This central supervision has been enhanced by the personal activity of the board through such extra legal methods as are used by the board of State charities. The board publishes a weekly "Health Bulletin" and a "Monthly Sanitary Record;" these publications, together with the annual report, which is made to contain matter of popular interest, and the annual conference of local and State boards, serve to unify the action of the various localities and create a harmony of sentiment between local and State authorities.

The results that have attended this centralization are gratifying to advocates of centralized administration. The most flagrant violations of the principles of sanitation before the organization of the board were the pollution of the water supply in large cities, the lack of proper sewerage in the villages, and the utter disregard of quarantine all over the State. In 1886 less than five cents to each inhabitant was spent for sanitary purposes in the two hundred and ten villages of the State.[2] Epidemics were common, especially typhoid and diphtheria. In 1885, in a number of villages,

[1] 95 *O. L.*, p. 643. *Ibid.*, 421.

[2] Second *Report State Board of Health*, p. 4.

forty per cent. of the cases of diphtheria proved fatal.[1] In one village, in which a diphtheria epidemic raged, the secretary of the board found that "vaults, hog pens, stables, slaughter houses, garbage piles, cattle pens, bone-dust and fertilizer depots; one and all emitted their peculiar and offensive odor." There was no sewerage, the water supply all taken from wells and cisterns, and these were surrounded by mud holes. Absolutely no care was taken to isolate the patients.[2] In another village in southern Ohio 12⅓ per cent. of the population were stricken with diphtheria. Public burials were held, there was no quarantine, and the town was in a state of panic. The secretary of the board visited the place, organized a local board of health, established quarantine and a house to house inspection, and gave orders for the correction of all unsanitary conditions.[3] These two cases may be taken as the normal condition of affairs at the time the board was established.

In contrast may be cited the method of treating the recent small-pox epidemic. The disease first appeared in April, 1898, and was introduced into a number of towns in the western part of the State by a traveling show. Of one hundred and eighty-one cases reported that year only sixteen of the cases had ever been vaccinated, and in ten of these cases vaccination had not been had within ten years. Only three cases proved fatal. The State board immediately established rigorous rules for the prevention and spread of the disease. The next year, however, the epidemic spread, not only in Ohio, but in nearly all the Northern States. So well was it held in check that of the eighteen hundred and ninety-six cases reported only twenty-nine proved fatal. The board reported that the disease had "in no instance got beyond control."[4] Only the effective vigilance of the

[1] First *Report*, p. 4. [2] *Ibid.*, p. 131.

[3] 4th *Report State Board of Health*, p. 60. [4] *Ibid.*, XIV., p. 10.

board prevented a serious spread of the disease in the winters of 1900 and 1901.

The control of the water supply and sewerage system has been placed entirely in the hands of the board. Several bills have been prepared by the board designed to secure to the municipalities permanent water supplies by setting aside all streams and lakes that might in the future provide water sources for the cities, and placing these reservations in the custody of the State. The object is to give to the State ultimately the control of the water systems of all the municipalities. None of the bills has ever received legislative sanction, but a considerable sentiment has been created favoring this plan.

The board has modified or rejected plans for water and sewerage systems for many of the principal cities, including Cleveland and Cincinnati, compelling strict conformity to its suggestions. The following table exhibits the number of plans accepted and rejected:

Year.	Number of city water works plans approved.	Number rejected or altered.	Number of city sewerage plans approved.	Number rejected or altered.	Number sanitary plans approved for State institutions.
1894	8	....	3	2	....
1895	18	5	9	2	....
1896	26	....	7	....	5
1897	8	2	9	6	4
1898	12	2	7	....	2

There have been singularly few cases taken into the courts challenging the powers of the board. None of these has as yet reached the Supreme Court. The lower courts have upheld the board in its efforts to enforce vaccination,[1] also the local boards in their attempts to punish individuals for

[1] XIV *Report State Board of Health*, p. 71.

creating a nuisance by allowing garbage to accumulate on their premises, even though the municipality has provided no places for the disposal of such garbage,[1] and in a case brought in the city of Toledo the Circuit Court confirmed the power of the local board to quarantine and destroy property without the city becoming liable to recompense the owner.[2]

Perhaps the most effective power of the board is secured it by the public opinion it has aroused. The studied object of the reports, an extensive local correspondence, papers, interviews and other measures for reaching the public mind has been to arouse a healthy sentiment for healthy surroundings. This creation of a popular sentiment in favor of better sanitation for the most part is due to the united efforts of the State and local boards of health.[3]

On the other hand the greatest detriment to the efficiency of local health administration has been the lack of sympathy that often existed between the council and the board of health, the council often not allowing bills for necessary expenses. Frequently an entire board has resigned because of such unpleasantness. To partially remedy this difficulty the revision of 1902 was effected.

There has been thus a gradual increase in the power of the State board of health. The steps are not difficult to trace. Since the establishment of the board there have been three revisions of the health code, and each one added materially to the powers of the board. As well did each successive law perfect the local administrative machinery for co-operating with the central board. At first only the large cities were organized, then all cities; next all towns of five

[1] XIV *Report State Board of Health*, p. 210.

[2] Turner *vs.* Toledo, 15th *Ohio Circuit Court Reports*, p. 621.

[3] *Sixth Annual Report.*

hundred inhabitants or more, and finally all townships and towns were required to provide local boards, the law giving to the State board the authority to appoint local officers in cases where localities were tardy in responding.

The efficiency of health administration throughout the State has advanced with this increasing authority of the State and local boards.

TABLE SHOWING TOTAL NUMBER OF DEATHS AND THE PROPORTION DUE TO ZYMOTIC AND OTHER DISEASES.
COMPILED FROM STATE BOARD OF HEALTH.

Year.	Estimated population.	Total Deaths.	Annual Rate per 1000.	Zymotic Diseases.	Croup and Diphtheria.	Diarrhœal and Dysentery.	Measles, Scarlet Fever and Whooping Cough.	Typhoid.	Consumption.	Local Diseases.	Developmental Diseases.
1888	1,021,400	16,851	16.5	4,348	881	1427	375	695	....	7,262	1410
1889	1,139,800	16,762	14.16	4,069	1777	940	381	540	2098	6,686	1452
*1890	1,212,727	21,648	17.855	5,390	1714	1275	569	748	2457	9,340	2019
1891	1,244,800	20,960	16.88	4,842	1224	1303	342	691	2402	9,397	1946
1892	1,265,076	22,957	18.14	4,929	1448	1170	432	611	2428	10,178	1890
1893	1,364,945	23,794	17.43	5,240	1129	1053	425	718	2648	10,861	2093
1894	1,372,133	23,993	17.48	5,447	981	1527	965	709	2712	10,698	1851
1895	1,406,434	24,717	17.57	4,676	864	1321	547	776	2871	11,055	2138
1896	1,753,992	23,794	13.57	4,722	1162	1028	308	767	2637	10,074	2106
1897	2,141,781	26,215	12.24	4,486	778	1064	333	661	2972	11,365	3144
†1898	2,705,126	29,346	10.85	4,997	747	1120	458	923	3232	13,576	2445
1899	2,760,720	32,309	11.70	6,127	854	1210	522	1072	3148	14,464	2528
1900	2,760,656 (census)	34,296	12.66	6,299	983	1389	499	1291	3241	15,912	2705

* Increase due to the more accurate reports, due to new law requiring burial permit.

† In the last four years there has been an unusual amount of epidemics.

CHAPTER V

MISCELLANEOUS FUNCTIONS

In this chapter will be grouped various administrative functions undertaken by the State, not all of which can be said to have been formerly discharged by the localities. They are, in large measure, of more recent development than the functions described in the preceding chapters, and show a somewhat greater degree of centralization. In a few instances a gradual increase of power is evident, while in others no great measure of authority has been granted by the Legislature.

The administrative authorities to which these functions have been entrusted may loosely be placed in four groups, according to the general functions and the nature and extent of the power granted.

First, a group of authorities whose functions are merely to minister to certain conveniences of all the citizens, and to whom is granted practically no power. This includes:

1. The State board of agriculture, which supervises the holding of farmers' institutes in the various counties and has charge of the State fair.

2. The free employment bureau, which seeks to aid those in quest of employment. The bureau has not been a success, as the area covered is too great.

3. The weather and crop service, connected with the agricultural experiment station. The name indicates its duties.

The suggestions of these boards have no binding effect.

Second, those authorities vested with a definite power,

but the direct effect of whose findings is restricted to a very limited number of citizens, and whose recommendations are not mandatory upon even this limited number. This group includes only two boards, the State board of pardons, which recommends prisoners for executive clemency, and the State board of arbitration, which investigates strikes and lock-outs and seeks to bring about reconciliation between the parties to the conflict.

Third, a group of boards whose determinations have a binding force in their limited spheres of action. Their function is to inquire into the fitness of persons desiring to practice those professions upon which the general welfare of the State depends in large measure. The State has authorized these examining bodies in order to protect herself against the unfit. They include the boards of examiners for medicine, veterinary science, dentistry, law and pharmacy. The State board of school examiners might properly be included in this list. The only control exercised by the State over the clerical profession is in the requiring of proper certificates of ordination for the solemnization of marriages.

But it is entirely with the *fourth* group that this inquiry is directly concerned. It includes authorities whose functions may properly be included under police administration, and embrace principally powers of inspection. The various authorities vary greatly in the degree of their development, and therefore in the extent of their powers. Most of the duties are of such a naturre that State action alone makes them effective. A few of these functions were formerly undertaken only by the locality, and these are even now not entirely abandoned by the municipalities to State action. Rather the State acts in conjunction with the locality. These authorities will be enumerated in the order of their development.

1. *The Commissioner of Railroads and Telegraphs.* The rapid development of railroads in the last fifty years led to the enactment of restrictive laws for the safety of the public. These restrictions were so generally disregarded by the companies, and localities were so remiss in enforcing them, waiting usually until some disaster drove them to action, that the Legislature authorized the appointment of an officer who should see to the proper enforcement of the laws.[1] The duties of the commissioner are two-fold. He is first to gather information concerning the various railroads of the State. To facilitate this the president of any railroad company doing business in the State must report annually to the commissioner the details of the business of his road. The law enumerates fifty-nine points under which answers must be filed. The report is under oath.

But his most important duty is that of inspection. Upon the commissioner the Legislature has placed the stupendous task of seeing that the railroad laws are properly enforced. The body of this law has so greatly increased in the past twenty-five years that an army of police, rather than one man, should be employed to look after the multitude of details embodied in its provisions. The commissioner is given, indeed, the power to appoint one assistant, an "inspector of automatic couplers or air-brakes and automatic power brakes,"[2] but his duties are limited as his title suggests. So the work of the commissioner has gradually settled down to the inspection of defective tracks, bridges and dangerous places, when complaint of the same is made to him, making inquests at railroad accidents, and carrying out some special order of the Legislature, as for instance the abolishing of grade crossings in cities and the placing of interlocking switches at crossings. Improvements of such magnitude usually require a number of years, and the

[1] 64 *O. L.*, p. 111. [2] *Revised Statutes*, secs. 3365–23 a-i.

commissioner merely approves of the plans submitted to him and records the gradual consummation of the work.

His powers are not at all commensurate with the importance of his tasks. In making examinations he has the power to subpœna witnesses and administer oaths. While the statute dictates that violators of the laws shall be punished, it fails to give him final power in the matter. He has the power to stop the running of passenger trains over places he deems defective. His approval must be secured for the stringing of telephone, telegraph, electric light, trolley and feed wires over railroad tracks, for the construction of overhead structures over railroad tracks, and for the plans and specifications of interlocking switches. He is also empowered to arbitrate differences between citizens and common carriers.[1] He reports his findings in all these investigations to the Governor, or to the Legislature if it is in session.

His salary is four thousand dollars a year; he is allowed twelve hundred dollars for clerk hire, and the law stipulates that he shall travel free over all the railroads of the State.

Telegraph companies are now subject to his inspection, and recently electric interurban railways have been placed under his supervision.

2. *Superintendent of Insurance and Inspector of Building and Loan Associations.* The continual abuse of public privilege, and imposition upon policy holders by insurance organizations which purported to be on a firm financial basis, but whose assets were in reality fictitious, led to the enactment of laws regulating both life and fire insurance companies. The enforcement of these laws was delegated to the localities, but it was soon found that this decentralization produced neither harmony nor efficiency of action, and the State created the office of superintendent of insurance.

[1] 83 *O. L.*, p. 206.

The law states that the superintendent "shall see to the execution and enforcement of all laws relating to insurance." He covers under his supervision all fire, life, special, accident and fraternal insurance companies. These are all compelled by law to make elaborate reports, setting forth, under oath, such details of their business as the superintendent may demand. These statements are published in the annual reports of the superintendent, and the law requires that the individual companies publish their statements in local papers. This publicity is not the least benefit derived from the office.

In 1891 building and loan associations were made subject to the inspecting power of the superintendent. The decade preceding this arrangement had seen an enormous development of such associations in the State. These associations were first organized in Philadelphia, and spread quite generally over Pennsylvania. Ohio was soon overrun with them, and was soon the second State in the Union in the number of building and loan associations. It did not begin to exercise State control over them until a number of years after Pennsylvania had done so, and not until many investors had fallen prey to a number of irresponsible organizations. The larger cities were particularly infested with them. Many of these associations were totally irresponsible, and after an existence of a few years closed their doors, the officers and the funds paid in by the unsuspecting public having disappeared. The conditions were the more unfortunate because the majority of the stockholders were usually laboring people, who had thought to improve the opportunities offered by the associations to purchase a home and pay for it in small monthly installments.

The enforcement of the laws detailing the organization and manner of conducting the business of these companies is now made the duty of the commissioner of insurance.

Every association makes an annual report, showing in detail its financial condition. These reports are made under oath by the secretary and three directors of the company.

The powers of the superintendent are principally such as are necessary to make an adequate inspection of these companies. Through his deputies he is required to make a thorough examination of the funds, obligations and assets of any insurance company and building and loan association in the State. If he suspects any of the institutions as being unsound, he forthwith makes inquest, and if any are found unsound, he reports them to the Attorney-General, who at once proceeds to close the business of the company or association. If any are found doing business illegally they are given a specified time in which to rectify their course. The superintendent has the power to cancel the authority of a foreign company doing an illegal business in the State. The superintendent and his deputies have the usual power of examining witnesses, and have access at all times to the books of the companies.

The superintendent receives a salary of four thousand dollars a year. He appoints a deputy, a statistician and as many examiners, actuaries and clerks as he may need. The office is maintained by fees paid by the companies.

As a result of this vigilance and publicity, bogus companies have practically fled from the State, and failures in building and loan associations and insurance companies have become less frequent than failures in many other lines of business.

3. *Inspector of Mines.* This office was created in 1873 "for the purpose of facilitating a thorough and efficient inspection of mines in Ohio."[1] The act has been twice amended, each time adding to the efficiency of the inspector by providing more assistants, but his powers have not been

[1] 71 *O. L.*, p. 21.

greatly increased. At present the State is divided into seven districts, and the inspector appoints one district inspector for each district.

No person is eligible to the office of inspector unless he has a practical knowledge of mining engineering, chemistry, mineralogy and geology, and no one can be appointed as district inspector unless he is a practical miner of five years' experience and has resided two years in his district. They are all placed under bond and oath. The powers of the inspector and his assistants are virtually limited to an inspection of the mines and the publishing of their findings. They have the necessary power to enter the mines at any time, secure maps and diagrams, and examine witnesses. Mine owners are compelled by law to report each accident to the inspector as soon as possible, and the matter is then carefully investigated.

But the State seems to rely more upon the effect of publicity than upon any authority it has granted the officers. While they are to see that the mining laws are strictly enforced, they have no power to enforce them, except in cases of grossest neglect, such as pertain to ventilation and other sanitary conditions and safety appliances.

That the State relies upon the wholesome effect of publicity is also seen by the fact that the number of inspectors has been gradually increased, in order that the mines might be more frequently visited. It is now the custom for an inspector to visit a mine and notify the proprietor of what he finds remiss. He then returns soon to ascertain whether his demands have been complied with, and he repeats his visitations until the trouble is removed. So last year one mine was visited thirty-eight times, another eighteen times, and fifty-four were visited five times.[1] The details of each

[1] 26th *Report Chief Inspector of Mines*, p. 35.

visit are published in the annual reports, thus revealing each mine owner's shortcomings.

Just how many of the improvements that have taken place in the conditions of the mines since the establishing of State inspection are due to the vigilance of the inspectors, and how many are due to perfected methods of mining, it is impossible to determine.

4. *Live Stock Commission.* This was organized in 1884,[1] "to prevent the spread of dangerous and fatal diseases among domestic animals." The commission consists of three members, appointed for three years. They formerly employed a competent veterinarian as secretary, who devoted all of his time to the investigations ordered by the board. The board has stated monthly meetings. The immediate cause for the creation of the commission was an epidemic of Texas fever that created great loss among the cattle owners of the State. Previous to this time no action whatever had been taken by the State to protect the public against diseased cattle.

Although the commission is the only authority in the State empowered to deal with contagious and infectious diseases among animals, it yet has very few powers. In case a dangerous disease makes its appearance in any locality, the person owning or having charge of the infected animals shall immediately notify the commission. Thereupon the commission orders an examination by a veterinarian. If the examination shows that the animal is infected with a contagious disease, it is killed and the herd quarantined. The locality in which the disease prevails is also put under quarantine, with respect to domestic animals, and a local quarantine officer is appointed. This practically is the limit of power.

But even this power has been virtually taken away by the

[1] 82 *O. L.*, p. 176.

failure of the Legislature to appropriate money for the necessary expenditure, and for the last two years there has been no inspection, quarantine or other protection possible to the live stock interests of the State except that done at the personal expense of the board. There has been no money to pay a secretary, to whom the major part of the work was assigned. The condition of affairs is really alarming. In 1901 Texas fever made its appearance in the State. Only the personal interest and sacrifice of the commission prevented its general spread. Anthrax is threatening the sheep. Bovine tuberculosis is found in nearly every county of the State. There is no restriction of any kind placed by the laws upon the traffic in diseased animals, nor is there a general quarantine and inspection of cattle brought in from other States.

And in the midst of all these conditions the State Legislature has for two years failed to appropriate even enough money to pay the four dollars a day allowed by law to the members of the commission. The last annual report of the commission sets forth vividly these facts, and refers the Legislature to the manner in which Massachusetts is solving the problem of live stock inspection.

5. *Inspector of Workshops and Factories, and Bureau of Labor Statistics.* In this department the functions of inspection and of gathering statistics have been completely separated, and are assigned to two entirely distinct authorities that have no legal relations whatever. The bureau of labor statistics was established first.[1] The commissioner is appointed by the Governor, with the consent of the Senate. His duty is to gather "statistical details relating to all departments of labor in the State, especially in its relation to the commercial, industrial, social, educational and sanitary conditions of the laboring classes, and the productive industries of the State." In order to do this he has the

[1] 74 *O. L.*, p. 209.

power to send for persons and papers, to examine witnesses, and to inspect any business employing labor.

The commissioner is also at the head of the free employment bureau, which through five branches established in the principal cities seeks to find employment for the unemployed.

No tangible results appear to have followed the publication of these statistical details other than the usual enlightenment and wholesome effect produced by publicity. Nor has there been a cordial response to the efforts of the employment bureau.

The enforcement of the factory laws is entrusted to the inspector of workshops and factories.[1] The chief inspector is appointed by the Governor and the Senate for a term of four years. He appoints, with the consent of the Governor, thirteen district inspectors. The State is divided into twelve districts, and to each one is assigned a district inspector. The remaining district inspector is detailed to inspect the manufactories and storehouses of high explosives. These inspectors must all be skilled and practical mechanics, and the inspector of explosives must be thoroughly conversant with the manufacture of all high explosives. The chief inspector receives $2,000 a year, the inspector of explosives $1,800, and the district inspectors $1,000. They all receive the necessary traveling expenses.

As compared with the other inspecting authorities enumerated above, these inspectors of factories have a very much larger power. Ohio is a great manufacturing State, and its factory laws are complex and enter into great detail. It is the duty of the inspectors to visit all of the shops and factories in their districts as often as possible, and to see that the requirements of the law are observed. They particularly note sanitary conditions, safety appliances connected with dangerous machinery, means of exit, and the employ-

[1] 82 *O. L.*, p. 178.

ment of minors and of females. Recently there have been added a number of important duties, including the inspection of bake shops and of sweat shops; the examination of halls, theatres, churches, school houses, hospitals and all other public buildings, a certificate from an inspector being a condition precedent to the opening of any of these to the public; and finally the inspectors are empowered to see to the enforcement of the laws pertaining to the erection of buildings, e. g., the placing of scaffolding and temporary flooring. All serious accidents are now reported to the chief inspector, and are immediately investigated by him. To make such examination as thorough as possible, the inspectors are privileged to enter all such premises at any reasonable time, to examine witnesses, to inspect all appliances and apparatus, and examine all books and records. To make their findings of any avail, the inspectors are empowered to prosecute all delinquents who, after due notice, fail to comply with their orders.

The methods of prosecution vary with different offences. In some instances the prosecuting attorney of the county is authorized to proceed against the offenders, but usually the inspector himself proceeds against the delinquents. The statutes provide penalties for each offence; these vary in amount from ten dollars to one thousand dollars, and in severity, imprisonment from ten days to six months.

There is manifest a distinct tendency to increase the efficiency of this inspection. When the law was first passed, in 1885, only three district inspectors were provided. This number was increased by eight in 1892, and two more were added in 1898. Their sphere of power has been gradually enlarged, until now, as stated, they even inspect buildings in process of erection.

The inspection has resulted (1) in the enactment of wiser laws pertaining to the regulation of factories, shops and

public buildings, due to the fact that the reports of the chief inspector have emphasized the needs of such legislation. (2) In the gradual improvement of the conditions of employment and labor throughout the State. There has been a manifest willingness on the part of the factory owners and employers of labor to follow the reasonable demands of the inspectors. This has resulted in better appliances, more healthful surroundings for the employees, and a decrease in the number of accidents in those pursuits where dangerous machinery must be used.

In 1900, 2,432 factories were inspected; 1,090 of these were ordered to make alterations. All but 130 of these orders were voluntarily obeyed. Of bake shops, 812 were inspected, and 229 alterations were ordered. Only 27 of these were refused. Of 38 orders issued to mercantile establishments 13 were ignored. 3,712 buildings were inspected and 1,260 accidents investigated.

Recently a convention of factory inspectors has been organized, which urges all employers of labor and those interested in industrial betterment to attend and participate in the discussions. This will prove at least a creator of sentiment, and will bring about some degree of co-operation between the manufacturers and the State authorities. The chief inspector also has been instrumental in interesting local private organizations, such as Boards of Trade and Chambers of Commerce, in the conditions of the factory workers. As a result of these extra legal forces a widespread interest has been aroused throughout the State in bettering factory conditions, and many notable examples of such betterment have been evolved. Familiar instances are the National Cash Register Company of Dayton, the Sherwin-Williams Paint Company, and the Twist Drill Company of Cleveland. While these are not the immediate outgrowth of State inspection, yet their influence is multiplied and their details are perfected through the activity of State inspectors.

6. *Dairy and Food Commissioner.* This office was created in 1886.[1] The commissioner is appointed by the Governor, with the consent of the Senate, for a term of two years. He receives a salary of $1,500 a year and his traveling expenses. He may, with the approval of the Governor, appoint two assistants and such experts as he deems necessary.

The agitation among the farmers and dairymen against oleomargarine was the immediate cause of the creation of the office, and the first act mentioned specifically only dairy and farm products as the objects of the commissioner's inspecting power. There had been previous enactments prohibiting the adulteration of food stuffs, but for want of a central authority to enforce them they had practically remained dead letters; the localities paid no attention to them. As the excitement over oleomargarine subsided, in response largely to the legislation by Congress, the field of the commissioner was widened, and what had before been a general power to prosecute all persons "engaged in the manufacture or sale of any adulterated or counterfeit article or articles of food or drink" was made more and more specific by the enactment of laws against particular kinds of adulterations, and enumerated articles that had become the subject of adulterations. So at present there is a large list of articles that have been made the special objects of the commissioner's scrutiny.

The task of the commissioner is a very difficult one. The field is so large and complex; the law allows him so little help; there are so many places where food and drink are offered for sale and so many manufactories of food stuffs to visit; and the market offers such a great diversity of "ready made" foods, which are really the most adulterated articles exposed for sale, that only a very small per cent. of the

[1] 83 *O. L.*, p. 120.

establishments can be inspected and only a few articles analyzed each year. Moreover, the nature of the business makes evasion of the law easy. In 1900, 923 articles were examined; 383 of these were found adulterated, and 132 prosecutions resulted. About two-thirds of the defendants usually plead guilty. The remainder fight their cases through the lower courts.

The commissioner is given the power to enter any establishment where food and drink are offered for sale, and he may open any package for examination. He calls upon the prosecuting attorney of the county to prosecute all violators of the laws. All prosecutions under the statute must be by criminal process.[1] Naturally a large amount of litigation has resulted from the activities of the commissioner. The majority of the cases never question the validity of the specific laws under which the action is brought, and in only a few instances has the authority of the commissioner been attacked. The courts have uniformly upheld the acts, and have supported the commissioner in his attempts to prosecute violators. Only a few of these cases have reached the higher courts; these are brought by the large corporations that have an extensive business at stake. The most active opposition has come from the oleomargarine interests.

The Supreme Court of Ohio in the first case brought before it for adjudication on the subject maintained that the Ohio statutes pertaining to the adulteration of dairy products are a reasonable exercise of the police power of the State, and issued judgment of ouster against a corporation for defying the law. The case was appealed to the United States Supreme Court, but has not yet come to a hearing.[2]

[1] State *ex rel.* Reynolds *vs.* Capital City Dairy Co., 62 *O. S.*, p. 123, where it was decided that an injunction will not lie at the suit of an inspector to compel a manufacturer to provide a sample of his goods for analysis.

[2] State *ex rel.* Attorney General *vs.* The Capital City Dairy Company, 62 *Ohio State*, 350.

The powers of the commissioner have been upheld in a number of cases in the minor courts. The Superior Court of Cincinnati early refused to enjoin the commissioner from prosecuting the manufacturers of certain prepared foods.[1]

Recently the United States Circuit Court refused a temporary injunction to restrain the commissioner from prosecuting the Arbuckles for selling their "Ariosa" brand of coffee. This case has likewise been appealed to the United States Supreme Court, and awaits further adjudication.

And one of the county courts has upheld the statute giving the commissioner the right to prosecute violations of the oleomargarine law, by persons other than manufacturers, without the intervention of a jury.[2]

While the trend of the decisions seems to uphold the commissioner in his activities, no great amount of good can come from his labors until he is given more aid. It is beyond the power of three men to exercise enough vigilance to cover an entire State when evasion of the law is so easy.

7. *Inspector of Oils.* This office was created in 1878,[3] soon after the discovery of large quantities of oil in the State, and the act authorizing the appointment of the inspector closely followed the Pennsylvania statute on the same subject.

The law was completely revised in 1884.[4] The inspector now appoints six deputies. The State is divided into seven districts, and each inspector is given charge of one district. Before any illuminating oils can be offered for sale in the State they must be inspected and their quality determined according to the standard fixed by law.

The office is maintained by fees, which amount to $10,000

[1] The Pre-digested Food Co. *vs*, McNeal, I. *Ohio Nisi Prius*, p. 266.

[2] *Vid. 16th Report of Dairy and Food Commissioner*, p. 5.

[3] 75 *O. L.*, p. 564.

[4] 81 *O. L.*, p. 140.

a year in the case of the chief inspector, and $5,000 a year for the deputies.

8. *Fish and Game Commission.* Under this title the State maintains a system of police for the protection of fish and game. The commission is composed of five members, appointed for five years,[1] and they serve without pay. They examine the various streams and lakes of the State to ascertain whether they are suitable for the propagation of fish, and co-operate with the United States Fish Commission. They appoint a chief game warden, who receives twelve hundred dollars a year and his traveling expenses. They also appoint a warden in each county (the State Supreme Court has recently decided that this provision of the law is unconstitutional, the county wardens being officers and must be elected), and special wardens in those counties wherein are the largest lakes. The county wardens appoint their own assistants, as many as they may need, and all are under the direction of the chief warden, who in turn receives his instructions from the commission.

The county commissioners, upon the recommendation of the State commission, may allow the county wardens a salary of three hundred dollars a year. Otherwise they receive fees, which are the same as those paid to the sheriff of their respective counties. All of these wardens have the powers of sheriffs, and their police vigilance in most parts of the State is effective. It is always, however, difficult to secure the conviction of those whom they arrest, because of insufficient evidence.

9. *The State Fire Marshal.* The last administrative office created by the Legislature is that of State Fire Marshal, and it is at once the best example of centralization in the State. The law was passed in 1900, and was called forth by political contingencies rather than by a popular

[1] 72 *O. L.*, p. 141.

demand based upon urgent need. Nevertheless the need existed, and the vigilance of the State seems necessary to check the rapid increase of incendiarism and to aid in solving the serious problems of fire protection.

The act contemplates a system of fire police, and secures this, not by a body of centrally appointed officers, but by the co-operation of local officials with the State officers. The Governor and the Senate appoint a chief fire marshal, who in turn appoints two deputies. The chief marshal receives a salary of $3,000 a year, the first deputy $1,800 and the second deputy $1,500, and all of them are reimbursed for their necessary expenses. The office is maintained by a tax on insurance companies, and the chief marshal can employ as many clerks and assistants as the total sum collected will enable him. The office must be self-sustaining.[1] The chief of the fire department of each city, the Mayor of every incorporated town which does not maintain a fire department, and the town clerk of every township outside the limits of organized cities or villages are virtually made local fire wardens, for they must report every fire at once to the State marshal, and must make careful examination of all the circumstances surrounding the fire. A record of all these investigations is kept open for inspection in the office of the State marshal.

Whenever a case appears to demand special investigation, the State marshal sends a deputy or assistant, who at once begins a systematic and thorough inquisition. He has the power of a trial justice for summoning and examining witnesses; he may arrest all suspected persons, and the investigations may, if he deems prudent, be held in private.

[1] At present the entire force consists of the chief marshal, his two deputies, a statistician, a clerk, one chief assistant, a detective and seven assistants. Each assistant is assigned to one of the seven districts into which the state is divided, and supervises those local officers who are made amenable to the department by law.

The local authorities mentioned have the right to investigate at any time any premises within their jurisdiction to ascertain whether they are in safe condition, or whether inflammable material is stored in them, to the danger of the neighborhood, and if the officers find it necessary they must order the removal of all such material. But in these instances an appeal lies to the State fire marshal, whose decision is final. Criminal prosecutions alone are authorized by the act.

The co-operation of the local authorities is secured by a penalty imposed upon all who fail to comply with the requirements of the law.

The fire marshal has been in power only eighteen months, a period entirely too brief to test the efficiency of his department. But the reports that have been published seem to justify the creation of the office, and point to a real need of State supervision in such matters. There are two general lines of work laid down in the statutes for the fire marshal. 1. The inspection of buildings that are thought unsafe, and the removal from them of all combustible and inflammable material. Under this authority a number of tumble-down buildings, that were resorts for tramps, and mere fire traps, were torn down the past year. In eighty-seven cases the owners of buildings were notified to remove explosives or combustibles from their premises, and to repair dilapidated buildings. Only one of these persons failed to comply with the request, until he had been arrested.[1] This function is also exercised by the cities, their charters granting them the right to pass building ordinances, regulate fire limits, and to remove dangerous structures. But only the larger cities have been alert to these dangers. The work of the fire marshal has been principally confined to the cities of

[1] *Second Report, State Fire Marshal*, p. 7.

the second class and the rural districts. It has required State supervision to remind these localities of their duty.

2. The principal function of the marshal is to ascertain the causes of fires and to hunt down incendiaries. During the past year 7,011 fires were reported, involving a loss of $7,232,102; 1,267 of these fires were reported as of unknown origin and 291 as incendiary fires.[1] Investigation seems to prove that a great many of the fires reported as of unknown cause were incendiary, and the marshal estimates that nearly twenty-five per cent. of the total loss was caused by incendiaries. In attempting to reach these criminals 565 investigations were made, resulting in sixty-six arrests and forty-three indictments. Twenty-four of these came to a hearing, sixteen were convicted and eight acquitted. In three of the cases the parties were extradited from other States, whither they had fled. There are twenty-six cases still pending from the previous year. Nine persons who were either indicted or bound over to the grand jury have fled from the State, forfeiting their bail. The marshal has offered rewards for their apprehension.

That a number of persons in the State are confirmed incendiaries, or pyromaniacs, seems demonstrated, for of the total number arrested twenty-nine had from one to nine previous fires charged against them, and seven prisoners were pronounced insane. The rapid multiplication of this evil has been alarming. "In several sections of the State incendiary fires had become so frequent that insurance companies were driven out, the loss being larger than the premiums received, and the people were unable to secure indemnity at reasonable rates, and in some cases no protection at all."[2] Pecuniary gain made possible by over-insurance appears to be the principal motive in these cases. The

[1] Forty-two persons were burned to death and 142 seriously injured.

[2] *Second Report, State Fire Marshal*, p. 4.

proper remedy should be sought through the insurance companies who have accepted such risks on excess values.

The careful inquiry made into the causes of fires leads to a secondary result, the more careful inspection of buildings by the State inspector of workshops and factories, and by city authorities and insurance companies.[1] A large majority of the fires are due to carelessness; directly to the careless handling of combustibles or inflammable materials; indirectly to faulty construction of flues, wiring, plumbing and other evils that can be remedied by strict surveillance.

Considerable opposition has arisen against the department, due to an exaggerated conception of the relation of the fire marshal to the insurance companies. Because the annual report of the marshal is made to the State commissioner of insurance in place of the Legislature, and because the marshal is required to report the findings of all special investigations to the insurance commissioner, who in turn may send them to the insurance companies interested, the public has been misled into the notion that the State supports the department solely for the convenience of the insurance companies. The office is, however, maintained by fees assessed upon the fire insurance companies. And its activities have resulted, even in the few months of its existence, in so much good to the public, and there is such an evident need for some kind of State supervision, that this opposition will probably wear away and the department increase in efficiency as the State recognizes its importance.

The activities enumerated in this chapter reveal a distinct tendency toward centralization. This tendency has been accelerated in recent years. For the authorities that have been established last have been endowed with the most power, and the authorities established in the earlier years have been gradually growing in power. For example, the

[1] *Second Report*, p. 6.

number of assistants granted to various officers has been greatly increased, as well as the legal powers. There has in each instance been a real need for State supervision, and therefore the results attained by each step toward centralization have been beneficial. These results, however, have been helpful directly in proportion to the amount of power granted. Finally, many of the authorities are crippled by the small powers given and the limited amount of aid granted for carrying out such legal powers as they possess.

CONCLUSION

This study of the tendency toward centralization of administration, in those functions wherein uniform action is most advantageous, reveals that Ohio, as compared with Massachusetts or New York,[1] and most other States, is in a transition stage. The Ohio ideal has always been central supervision in State affairs and home rule in local matters. All other departments of the government have been subordinated to the Legislature. Administration has been by statute. This has resulted in an administrative policy as fluctuating as the personnel of the General Assemblies that meet from year to year. While the State was sparsely settled, and its industries small, such administrative supervision was competent enough. But in recent years there has been a total lack of ability on the part of the Legislature to cope with the details of administration.

As Ohio has developed into one of the strongest Commonwealths of the Union, ranking fourth in population and commercial importance, and has been paramount in its political influence in national affairs, its tardiness in administrative efficiency becomes the more marked.[2] The causes must be sought in the political history of the State.

As was stated in the Introduction, Ohio was a part of the

[1] *Cf. Centralization of Administration in New York*, J. A. Fairlie, Columbia University Series in History, Economics and Public Law, Vol. IX, and *Public Administration in Massachusetts*, R. H. Whitten, *Ibid.*, Vol. VIII.

[2] While Ohio thus is one of the greatest states in the Union, it was the 29th state to organize a State Board of Health; the 36th state to recognize the valid demands of its State University; the 25th state to organize a Board of State Charities, and is one of three States that withhold the veto power from their Governor

Northwest Territory. This vast region formed the first public domain of the United States. This was before a definite policy for the disposal of the public lands had been formed. Only a fraction of the territory, embraced within the present boundaries of Ohio, was disposed of in homestead claims. The rest of the lands were sold in large tracts to private corporations or were given as bounties for the payment of the veterans of the Continental Army.

There were eight centers of settlement, nearly all characterized by the individuality of the pioneers.

1. The Symmes Purchase, between the Great and Little Miami rivers, in the extreme southwestern corner of the State. Cincinnati was the center of the settlements of this region. The settlers came from New Jersey, and were mostly of Swedish and Dutch stock.

2. The Virginia Military Tract, between the Little Miami and Scioto rivers. These settlements radiated from Chillicothe as a center. The pioneers were from Virginia, and most of them had been soldiers in the war for independence. They were Episcopalians in faith, anti-Federalist in politics, and had a leaning toward slavery, at one time attempting to bring slaves into the State. The Ordinance, however, forbade it.

3. The Ohio Company's Purchase, in the extreme southeastern corner, with Marietta as a center. This was the first settlement in the territory, and its members came from Massachusetts.

4. Immediately north of the Ohio Company's tract, and bordering the Ohio river, the first United States surveys were made, and the townships thus mapped out were called "the seven ranges." They were purchased and settled by Pennsylvanians, mostly of German and Scotch-Irish descent.

5. Immediately to the west of the "seven ranges" was

the tract set aside by the National government as bounty lands for its soldiers. This tract was not settled by a homogeneous population, although many veterans from the Middle States, particularly from New York and Pennsylvania, settled there.

6. In the northern part of the State, bordering the south shore of Lake Erie, the Connecticut immigrants settled in the Western Reserve, with Cleveland as the principal center.

7. Five smaller tracts were granted to various parties. One to a company of French immigrants; these formed Gallia county, with Gallipolis as the principal settlement. Another tract was given to a Moravian band, on the Tuscarawas river, and three small grants to private parties.

8. The rest of the land, probably less than one-third of the entire area of the State, remained "Congress land," and was not settled by any definite homogeneous population, but was largely occupied by the immigrants, mostly Germans, who came to this country in the first half of the century.

These centers were completely isolated by the dense forests that covered the entire territory. Means of communication were imperfect. Each little group developed along the lines of its previous training and traditions. The differences in religion, early education and ideas of local self-government were great. There were Episcopalians, Lutherans, Presbyterians, Congregationalists, Moravians and Roman Catholics, each left alone in isolated areas. They fostered two different ideals of public education, the parochial school and the free school.[1]

[1] Later this led to considerable opposition in the legislature in behalf of public education. For a number of years the state catered to the foreign element, allowing the study of German in the public schools, as a substitute for English; and parochial schools in some of these areas remained until the middle of the century, the only schools open to the youth.

The Virginian method of county organization, the Pennsylvania and New York theory of township and county amalgamation, and the New England insistence upon township autonomy, all grew apace in the forest settlements of the northwest. The Federalist and anti-Federalist tendencies were marked in the different areas. There were two forces that tended to unite the people: the conflicts with the Indians, and the fact that so many of the pioneers had participated in the Revolution. But these forces tended to create a sentiment toward the National government rather than to obliterate their local differences. This early independence is shown by the action of the Western Reserve, which preferred to obey the laws of Connecticut rather than those of the territorial government. It was not until Connecticut renounced all sovereignty over the Reserve, in 1800, that its settlements voluntarily recognized the territorial acts.

From the first the settlers were men of strong personality and determined character. The larger centers at once established schools and academies, and as soon as possible each had its own colleges. Thus Miami University was founded in the Symmes Tract in 1809; Ohio University in the Virginia Military Tract in 1804; Marietta College in the Ohio Company's lands in 1835; Kenyon College in the United States Military lands in 1824; and in the Reserve, Western Reserve College in 1826, and Oberlin in 1833. These were local colleges, and although organized after the framing of the first Constitution, they aided greatly in perpetuating the ideals of their founders.

The original government of the territory, established by Congress, consisted of a Governor and judges, appointed by the President. It was the first territorial organization established by the new National government. The Governor was given large power, and together with the judges enacted the laws for the territory. A proviso, however,

restricted the legislative council to the selection of laws already in force in the States, and Congress reserved for itself the veto power upon all the acts of the Governor and his council.

The first Governor of the territory was Gen. St. Clair, a hero of the Revolution, a personal friend of Washington and Hamilton, and an ardent subscriber to their political theories. He ruled with an arbitrary hand, arrogating to himself all powers not specifically withheld. He organized counties, created offices and filled them, licensed tavern keepers, ferries and attorneys, and commissioned all military and civil officers. Nor did his council adhere to the instructions given by Congress. They altered and adopted laws at their pleasure, and established such local governments as they desired. Congress did not check them.

There was no opposition to the Governor's course until in 1799. That year the first territorial Legislature met. The ordinance creating the territory provided that when it contained five thousand white male inhabitants of legal age a Legislative Assembly should supplant the Governor's council as a law-making body. The assumption of power on the part of the Governor was roundly resisted by this Legislature. He claimed to be a co-ordinate branch of the government, and therefore vested with an absolute veto. Both claimed the right to create counties and establish local governments. The Governor did not heed their legislation, and arbitrarily created local sub-divisions to suit himself, and established them by proclamation without consulting the Legislature, and filled all offices without consulting even his council. His communications remonstrating against their usurpation of his powers were framed in offensive terms. Of thirty bills passed in the first session he vetoed eleven, over one-third.[1] General Harrison was elected the

[1] Burnett, *Notes on the North West Territory*, pp. 375–381.

first territorial delegate to Congress, over St. Clair's son, and when the Legislature adjourned there was much bad feeling against the Governor.

This feeling rapidly developed into a positive antipathy, for which the Governor was only partially responsible. The succeeding sessions were principally bouts between the executive and legislative departments, and in 1801 a delegate was sent to Washington to prefer charges against the Governor. His mission failed. National political parties were now forming, and the local spirit of the settlements was making itself manifest. The new country was growing phenomenally. In three years after the first Legislature gathered at Marietta, the eastern portion of the territory had enough inhabitants to form a State. The anti-Federalists, who were at first merely the anti-St. Clair party, clamored for admission. The Governor opposed it. His message derided the idea.

Jefferson was meanwhile elected President, and foreseeing the political advantages to be gained, favored the creation of a new State. An enabling act passed Congress in 1802. An election was called to appoint delegates to a constitutional convention. The issues were clear cut, the friends of the Governor, Federalists, seeking to avert admission into Statehood, the enemies of the Governor, anti-Federalists, striving to succeed in erecting the State. The enemies of St. Clair won, as they had a large majority in the convention. The Governor in an address so strongly criticised the action of Jefferson and of Congress that he was removed from office soon after the convention had begun its work. With exaggerated ideas of local autonomy, bred by the isolation of their settlements, and heightened by the arbitrary course of St. Clair; with an antipathy for strong centralized government induced by the general trend of political thought of that day; and with their personal dis-

like for the Governor inflamed into rancor, the convention set to work on the Constitution. The product was perfectly natural. The Governor was stripped of all power and the Legislature clothed with executive prerogatives. It appointed all State officers, all county judges, as well as the judges of the Supreme bench. The legislative department was made paramount, the executive and judicial departments were subordinated. In local government the compromise system of Pennsylvania was adopted, but it was not until twenty-five years later that the system of county organization was completed, the township remaining a more important unit until that time. Municipalities were incorporated by special acts of the Legislature.

This arbitrary action of Governor St. Clair did not extend to the other States carved out of the Northwest Territory. The first territorial Legislature was the only one in which all of the territory was represented. Of the twenty-two members sitting in this Assembly, three were from what is now the State of Michigan, two from Illinois and one from Indiana. The rest were from Ohio. Early in the year 1800 Indiana was set apart, and its jurisdiction extended over all of the rest of the Northwest Territory excepting the eastern portion of the southern peninsula of Michigan, which remained united with Ohio territory. But the Constitution of Ohio, 1802, described the northern boundary of the new State so as to cut off this strip, and it was forthwith annexed to Indiana. In 1805 the territory of Michigan was organized. Indiana was admitted to the Union in 1816, Illinois in 1818, Michigan in 1837, and Wisconsin in 1848. Thus all of these States were separated from Ohio, in time to avoid the peculiar influencces that shaped the government of Ohio. All of these States have made more progress toward centralization than Ohio.

This earlier idea of the supremacy of the legislative de-

partment is vividly shown by several incidents. In 1805 the Legislature gave justices of the peace jurisdiction, without a jury trial, over all civil cases when the amount did not exceed fifty dollars. As the Constitution of the United States fixes the limit at twenty dollars, the Supreme Court of the State promptly declared the measure unconstitutional. This greatly incensed the Legislature. Resolutions of impeachment were introduced against the Supreme bench, but the trial resulted in an acquittal. In 1810, however, the resolutions known as " Sweeping Resolutions " were passed. The judges and State officers had originally been appointed for seven years, and the resolution recited that inasmuch as the seven years had elapsed, the time for renewal had come. Every judge of the Supreme Court and Common Pleas Courts, the Secretary of State, the State Auditor and State Treasurer, together with all the justices of the peace of the State, were removed from office. The interpretation placed by the Legislature upon the provision limiting the term of office to seven years was improper, for nearly all of the original appointees had been replaced, either because of death or resignation, and very few of the officers thus summarily removed had served seven years.

The Legislature's attitude toward the United States Bank also indicates the extravagant ideas it had concerning its powers. Two branches of the bank had been opened in the State. In 1819 the Legislature passed a law taxing each branch $50,000. The banks refusing to pay this sum, the State collector was empowered by law to remove $100,000 in currency or notes from the banks to satisfy the claims of the State. But the United States Circuit Court had previously enjoined the State officers from proceeding under the statute, and the officers were accordingly punished for contempt. Successful suit was brought by the bank to secure the money, and the United States Supreme Court in

1824 declared the Ohio act unconstitutional. But the Legislature was not appeased until it had passed a law withdrawing all protection of the State laws from the United States Bank and closing the courts of the State against it. It was made a punishable offence for a judge, justice of the peace or any other judicial officer to take official cognizance of the bank, or to take acknowledgment of any deeds or other conveyances for the bank. Sheriffs were forbidden to serve processes, and notaries from making protest of national bank paper. The Legislature even went so far in its spite as to affirm the Kentucky and Virginian resolutions. This, however, remains the extreme limit of State's rights reached by the Legislature, and subsequent history has amply redeemed the State from this act of nullification.

While the Legislature did not subsequently exalt the theory of State's rights, it in no wise receded from its belief in its own executive and administrative powers. About this time the country was beginning to feel the need of better means of communication. Turnpikes and canals were projected on a continental basis. Ohio at once began to plan for State canals and turnpikes. The unchecked Legislature grew lavish. Two canals were built, connecting Lake Erie with the Ohio River. Numerous branches were begun. State roads radiated from the largest cities. The State subscribed one-third of the stock in all private canal and turnpike companies. While the Legislature placed the administration of these vast undertakings in the hands of a Board of Canal Commissioners, it never gave the commission much power. Every year detailed instructions were given the commissioners, and they were handicapped at every turn by too much legislative vigilance. The extravagance of the law-makers and the introduction of steam roads brought the State to the verge of financial ruin, and the Constitution of 1851 put a check upon the Legislature's power to pledge the State's credit.

A quaint and faithful account of the operations of the Legislature under the first Constitution is given by Caleb Atwater in his History of Ohio. It was written in 1838.

"Our General Assembly has too much power, and in times of peace they assemble quite too frequently and sit too long. Whole millions have been wasted in useless legislation. Without more restraints on the law-making power, without an absolute prohibition against electing their own members to offices, this Constitution cannot last long, because our republican form of government can only last while the people are in love with it. . . . We will not attempt to point out all the evils which this power in the General Assembly has produced. A volume would barely enumerate them. During the term for which any member is elected he ought to be ineligible to any other office." Because of the absence of any veto power "unconstitutional acts have been passed in every period of our short history. Acts have been passed, worded exactly like former ones, without repealing the former ones. Criminal laws have been repealed (a whole criminal code) without any saving clause as to crimes committed under them, so that the greatest criminals have escaped punishment. Laws have been amended and made worse merely for the sake of making a good sized volume, and as a mere excuse for members of Assembly staying at the seat of government and drawing their three dollars a day. In all such cases a power of prorogation in the Governor, or of rejecting such acts as unconstitutional, as inexpedient or unnecessary, would have saved to the people at least large sums of money. As it now is, during many sessions of the Legislature, all well-informed men live in fear of some new efforts being made to almost ruin the State." [1]

[1] Atwater, *History of Ohio*, pp. 172, 173, 175. Mr. Atwater was creditably dentified with the early history of the state. He was a member of many of the

The Constitution of 1851, even now in force, was framed to prevent the Legislature from subscribing the State's credit to private corporations, and to prohibit the State from participating in and making internal improvements of any kind. A tax law was embodied in this Constitution, and special legislation prohibited. These were the only restrictions placed upon the Legislature, nor were the Governor's powers increased. It is true he was given the power to appoint certain officers, but all of his appointments must be confirmed by the Senate. Thus the new Constitution placed no check upon the riotous tendencies of the Legislature to invade all administrative details, and the history of administration traced in this essay proves that the legislators have been true to the traditions of the fathers, and a careful survey of the acts of the Legislature proves that they have not greatly improved in the art of law-making.

With the increasing complexity of economic life, the Legislature has been called upon to provide for more and more details of administration, and to project the State into those spheres of activity that formerly were occupied solely by localities or were left entirely alone. To this need the Legislature has failed to adequately respond. The pitiable history of the school administration [1] and of the Board of State Charities,[2] and the tardy action taken in organizing a State Board of Health, reveals this.[3] In the more recently

learned societies of America, and the author of numerous scientific works. He represented Cincinnati in the legislature for several years, and his influence largely prevailed in the establishing of the public schools. *Vid. supra* p. 25. The government under this constitution is thus characterized by Rufus King: "Briefly stated, it was a government which had no executive, a half-starved, short-lived judiciary, and a lop-sided legislature." Rufus King, *Ohio*, in *American Commonwealth Series*, p. 29. And Thomas Corwin, one of the most brilliant of Ohio's governors, said that "the inquest of the office revealed that reprieving of criminals and appointing notaries were the sole flowers of the prerogative."

[1] *Supra*, pp. 23–73. [2] *Supra*, pp. 105–127. [3] *Supra*, p. 131.

constituted administrative authorities the Legislature has either withheld sufficient power or handicapped effort by meagre appropriations. The last report of the Ohio Live Stock Commission is taken up almost entirely with a perfectly justifiable complaint of the criminal indifference of the Legislature toward the commission, shown in its neglect to make any provision for even the necessary expenses. As a result, bovine tuberculosis, Texas fever and anthrax have invaded the State, to the great damage of cattle owners and the menace of the health of the Commonwealth.[1] There are but few authorities in the State that have not a just causes of complaint in the indifference of the Legislature.[2]

It seems hardly necessary to show why a Legislature is unfit to act as an administrative body. It must receive its knowledge of administrative details from others, and must act by proxy in applying the rules provided for each particular case. If it fails to heed the suggestions of those appointed to inform and advise it, or if it fails to delegate sufficient authority to administrative officers, then it falls far short of providing for effective administration. But it is just on these two points that a Legislature hedges when considering matters that appertain to administration. A Legislature that regards centralization with suspicion is not lavish in its delegations of power to a board or commissioners, nor is it at all prone to profit by the suggestions of other State officers.

In this study it has been seen how repeated recommendations from the Governor and other competent advisers have been utterly ignored, and the one fatal weakness of the Ohio administrative boards has been the want of authority. The creation of a public sentiment seems the only remedy. For

[1] *Vid. Report, 1900, Ohio Live Stock Commission*, pp. 1–7. *Vid. supra*, p. 149.

[2] The State Board of Health, the State Fire Marshal and the Inspector of Workshops and Factories are perhaps exceptions.

administrative details cannot be properly embodied in a Constitution because of the constantly growing needs of modern society.

Furthermore the function of a Legislature is primarily the making of laws. Its size is unwieldy for administrative purposes; its complexion is always partisan. Its acts are tinged by party influence. Impartiality, that is so essential in effective administration, is too often wanting in legislative action. The effects of this are apparent in the managing of State institutions.[1]

Because of the fluctuating conditions that determine the character of the law-making body, its action lacks plan and continuity. There is not that consistent effort towards a definite goal that is found in permanent and well established administrative bodies and in all successful private enterprises. It legislates at random.

Despite the constantly changing conditions that dictate the nature of the Legislature, a certain inertia, an unwillingness to depart from precedent, is apparent. The Legislature lacks initiative. It is not easy for it to change its policy. The older functions are only handed over to boards and commissions by degrees. Gradually old forms are disintegrated and new ones are substituted. When new functions are thrust forward, however, they are usually committed to strongly centralized authorities. It is the change from one method to another that appears most difficult.

Whenever the Legislature has created competent administrative authorities, it has done so only in compliance with a general popular demand or specific requests of State officers. The constant prayer of the Governors and the heads of departments and of subordinate officers has been for more authority. The annual reports of the State officers reveal the helplessness of administrative officers only par-

[1] *Vid. supra*, pp. 65, 66, 119.

tially endowed with power. So manifest has been this need in educational work that private initiative has been invoked to do what has been left undone through the inertia of the Legislature.[1] There has been a well recognized necessity for such centralization as has been effected.

Being thus based upon real needs, the results of such centralization as have been made possible by legislative enactments have been uniformly beneficial. In no sphere of action in which centralization has been attempted has the Legislature diminished the authority it granted because of unsatisfactory results. There have been instances of relapse when the powers of officers were revoked, but these have been due to political influences.

From its extreme position of administrative omnipotence the Legislature has been slow to recede. The history outlined in this paper reveals a gradual but steady transfer of power from the Legislature to administrative officers, a tendency toward centralizing in a responsible administrative body. This tendency to grant all the power necessary to competent administration has been much accelerated in recent years. In the past fifteen years in particular a large measure of State authority over matters formerly attended to by localities has been developed. The boards of more recent creation have the greatest power.[2] This evolution of the Ohio administrative authority displays three distinct steps in its development.

1. At first administrative matters were left almost entirely to localities. Legislative provisions remained optional; they were therefore practically disregarded. Complete decentralization existed.

[1] *Vid. supra*, p. 48.

[2] *Cf.* State Fire Marshal, *supra*, p. 127, and State Board of Health, *supra*, p. 131, with Commissioner of Schools, *supra*, p. 48, and Board of State Charities, *supra*, p. 113.

2. Then were created commissions and boards, with power to recommend and to guide such localities as cared to follow their suggestions into better administrative methods. This is optional centralization, and nearly all the Ohio boards are now in this stage.

3. A gradual increase of power has made of certain boards strongly centralized administrative bodies. The Board of Health is an illustration of this stage. When such an increase of power is granted the influence of the administrative authorities over the Legislature is proportionately increased, and the suggestions made are more potent.

The tendency in Ohio is toward this stage of mandatory centralization.

And finally this study suggests the power of an administrative board, even though endowed with little legal authority. The moral force of the Board of State Charities extends to the remotest details of its work. The things accomplished by the first superintendent of schools and by several of the subsequent commissioners suggest the same conclusion. The personal energy and ability of the administrative officers can to some degree offset the lack of legal authority. This of course cannot apply to all administrative functions, particularly those in which a great amount of police power is essential, and yet the creation of public sentiment will even in such cases do much toward bringing about the desired results. And conversely, great legal powers, not backed by public sentiment, will accomplish little.

VITA

THE writer of this dissertation was graduated from Oberlin College in 1896, with the degree B. S. The following year he spent in the study of jurisprudence and economics in the University of Michigan. In 1897 he was appointed to the chair of Natural Science and Political Economy in Buchtel College. This position he occupied five years, and in 1902 received an appointment as University Fellow in Administration in Columbia University.

During his year's residence in Columbia University the writer pursued, as major study, Administrative Law, and as minors, Constitutional Law and American and European History, attending lectures by Prof. F. J. Goodnow, Prof. J. W. Burgess and Prof. J. B. Moore.

While an undergraduate the writer won two prizes for theses, one upon the subject "Some Suggestions for Improving the Conditions of the Laborer," and the other upon "German Unification."

His work as a teacher included courses in Economic History, Political Economy, Railroad Transportation, Taxation, Introduction to Sociology, Political Science. In 1898 he prepared a monograph upon "Akron, Ohio; a Study in Commercial Geography," and in 1902 an article on "The Municipal Situation in Ohio," published in the June "Forum" of that year.

During his residence in Akron the writer prepared and delivered two series of university extension lectures, one series upon "Our Industrial Evolution," and the other on "Some Pressing Economic Problems." He also delivered

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The author has done some work in natural science as botanist of the Cook Arctic Expedition, and in 1899 he made an extended study of the oil and gas resources of eastern Ohio.